

# GRANDPARENTS' VISITATION RIGHTS

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## HEARING

BEFORE THE

SUBCOMMITTEE ON SEPARATION OF POWERS

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

### S. Con. Res. 40

EXPRESSING THE SENSE OF THE CONGRESS THAT A UNIFORM STATE ACT SHOULD BE DEVELOPED AND ADOPTED WHICH PROVIDES GRANDPARENTS WITH ADEQUATE RIGHTS TO PETITION STATE COURTS FOR PRIVILEGES TO VISIT THEIR GRANDCHILDREN FOLLOWING THE DISSOLUTION (BECAUSE OF DIVORCE, SEPARATION, OR DEATH) OF THE MARRIAGE OF SUCH GRANDCHILDREN'S PARENTS, AND FOR OTHER PURPOSES

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NOVEMBER 15, 1983

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Serial No. J-98-81

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Printed for the use of the Committee on the Judiciary



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U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1984



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# GRANDPARENTS' VISITATION RIGHTS

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TUESDAY, NOVEMBER 15, 1983

U.S. SENATE,  
SUBCOMMITTEE ON SEPARATION OF POWERS,  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The subcommittee met, pursuant to call, at 10:40 a.m., in room SD-628 of the Dirksen Senate Office Building, Hon. John P. East (chairman of the subcommittee) presiding.

Staff present: Thomas A. Bovard, general counsel, and Scott L. Wilkinson, Jr., chief clerk.

## OPENING STATEMENT OF SENATOR JOHN P. EAST

Senator EAST. I would like to convene, please, this hearing of the Subcommittee on Separation of Powers so that we might promptly take testimony this morning regarding Senate Concurrent Resolution 40.

I am going to be very brief in my comments, because of the time constrictions under which we operate.

I would like to say that I think the subject matter is very important: The question of grandparents' visitation rights in the case of the contemporary broken home. I believe that grandparents are among the greatest victims of the disintegration of the American nuclear family. Under the new morality, the divorce rate has approached nearly 50 percent at times.

Of course, other problems such as widowhood can create visitation rights problems for grandparents. Probably the single greatest contributing factor is the divorce rate, and though we are justifiably solicitous of the problems of the children with regard to proper custody and care, and of the rights of the respective parents as regards visitation, we have neglected the rights of affected grandparents. And I am sure they feel badly victimized by it.

The purpose of this hearing is to listen to some testimony pertinent to this problem. What the U.S. Senate can do, I do not know, but I certainly come to this task of the hearing with a sympathetic ear and a deep and profound interest. I can sympathize with them. I am not yet a grandparent, but I hope I will be, and I know at some point I would be deeply and profoundly hurt and disappointed if I learned I could not visit my grandchildren. This relationship is one of the great joys of the nuclear family and of the process of aging.

It is a very legitimate issue, and I am happy that the Subcommittee on Separation of Powers can contribute in some small way to its solution. So I wish to open on that positive, constructive note.

I would like to submit for the record, please, and without objection, a statement from the National Conference of Commissioners on Uniform State Laws, concerning grandparents' rights, and I would like for this report and a copy of Senate Concurrent Resolution 40 to be made a part of the permanent record.

[The following was received for the record:]

## National Conference of Commissioners on Uniform State Laws

645 North Michigan Avenue, Suite 510, Chicago, Illinois 60611 - (312) 321-9710

John M. McCabe  
Legislative Director

MEMO TO: Subcommittee on Separation of Powers

FROM: John M. McCabe *JMM/ema*

DATE: November 11, 1983

SUBJECT: National Conference of Commissioners on Uniform  
State Laws (ULC) Position on Grandparents'  
RightsINTRODUCTION

The ULC appreciates the request of the Subcommittee on Separation of Powers to appear on the issue of the grandparent's right or privilege of visitation with grandchildren. Since the Resolution before the Subcommittee urges the ULC to take on a drafting project for a Uniform Act pertaining to this issue, some statement of ULC functions would be appropriate for the Subcommittee to consider.

The ULC is an organization of the legal profession and a state service organization. It is a confederation of individual state commissions that are officially appointed from the legal profession in each state and member jurisdiction. By statute, most states delegate the appointment power to the governor. A few states provide, by statute, for appointment by other state officials. The states, also, provide funding for the operation of the ULC as a whole, and for the attendance of their own commissions to the yearly Annual Meeting of the ULC. Commissioners receive no compensation for their service to the ULC. Their time and expertise is contributed as a part of the public service obligation of the legal profession. The ULC was organized in 1892, and every state had joined by 1912. The states are not the only members, though. The District of Columbia and Puerto Rico participate in the ULC as full and equal partners with the states.

The ULC has one mission on behalf of state government. It is commissioned by its members to review state law and to consider those subject areas in which uniformity of law best serves the interests of the states and member jurisdictions. It then prepares drafts of legislation which the states and member jurisdictions may consider to establish uniformity between them. It must be emphasized that the ULC can propose, but the states must dispose. There is no uniformity in fact until they adopt the Acts proposed.

One of the ULC's primary areas of interest over the years has been family law. The current list of Acts available to the states includes the Uniform Marriage and Divorce Act, the Uniform Reciprocal Enforcement of Support



Act, the Uniform Child Custody Jurisdiction Act, the Uniform Parentage Act, the Uniform Recognition of Foreign Divorces Act, and, in 1983, the Uniform Marital Property Act and the Uniform Premarital Agreement Act. Clearly, the states have come to expect substantial family law legislation from the ULC.

Because the ULC has proposed much legislation in this field, the issue of the grandparent's right or privilege of visitation with grandchildren is of natural interest to the organization. It bears directly on existing Uniform Acts, especially on the Uniform Marriage and Divorce Act. Therefore, the ULC has, already, charged a Study Committee with the responsibility for looking at this issue and of making recommendations to the ULC Executive Committee with respect to a ULC response to it. The Study Committee is likely to make an initial report by July, 1984, in preparation for the ULC Annual Meeting in late July.

If the ULC decides to draft an Act or to amend any existing Act, its work will commence following the ULC Annual Meeting. By the ULC Constitution, every new Act must have one interim reading before final promulgation. This means, for any proposed Act, at least two years of work before completion. I point out these procedures so that everybody interested in the grandparent's right or privilege of visitation with grandchildren will be aware of them.

Of course, no decision has been made to draft, nor can I assure anybody that such a decision will be made. The decision will come in the orderly course of ULC activities, and will be based upon the usual factors the ULC considers in making such decisions. i.e., what is the need for uniformity, what should the scope of such legislation be, etc. The process, which has already been initiated, will be unaffected by any congressional action. In effect the Resolution before this Committee has, already, had the maximum impact it can have upon the ULC process. The initial action in the House of Representatives served to bring the issue to the attention of the ULC, and encouraged the assignment of the issue to the ULC Study Committee. The federal influence can extend no further, since the matter is purely a state matter and the ULC is purely an institution of state government.

#### RELEVANT ISSUES IN DETERMINING WHETHER TO DRAFT LEGISLATION

What I propose to do in the rest of this statement is preview the decision-making process of the ULC Study Committee. I emphasize that I cannot commit the ULC to anything, nor can I tell you exactly what the Study Committee will do. What I can do is review the issues that the Study Committee is likely to consider, so that interested persons may have some idea of what to expect. Please recognize that the following is speculative, at best.

I will proceed, based on questions that, I believe, the Study Committee will be asking itself in the coming year:

1. Should there be any legislation providing visitation rights to grandparents at all?

Common sense would tell most of us that most children benefit from contacts with grandparents. Such connections are likely to promote healthy growth and a general sense of well-being. When marriages break up, connection with extended family members may help cushion the trauma for the children of these marriages. We do not need social scientists to tell us, either, that contact with grandchildren usually promotes the health and welfare of grandparents.

But the prospect of a grandparent's right or privilege of visitation, enforceable in a court of law, raises some fundamental questions about access to the courts. Generally, courts have not had the power to consider disputes between family members, except between husband and wife in the dissolution of marriage action. In-law disputes are classic disputes within the family, and in-law tensions are the most common of tensions inside the family circle. Do we now wish to raise in-law disputes to a level such that they may be adjudicated in a court of law? Are courts of law, as currently constituted, competent to make such adjudications?

The latter question is a serious question. The states face an enormous, nearly unwinnable struggle with domestic relations adjudications. I can think of no area of family law, whether it be dissolution of marriage, adoption, termination of parental rights, enforcement of support, guardianships, or child custody, in which things are going well. The courts struggle to cope with adjudications of all these kinds of actions. They are poorly equipped for the task, and the results are uniformly unsatisfactory. Should we be adding new access to these courts when they do not do well what they are doing now? At some point in the United States, policy makers are going to have to realize that all issues are not legal issues and that some things must remain outside the circle of those things legally enforceable. The adjudication of so-called grandparents' rights may or may not fall within the magic circle, but the question is one that must be asked in considering a Uniform Act.

The parent-child relationship has remained pretty well unassailable in American jurisprudence. Courts and legislatures have not readily entertained the abrogation of the parent-child relationship, recognizing its fundamental character. It is a complicated relationship involving both rights and obligations. Visitation rights for grandparents are an abrogation of the parent-child relationship. The existence of such rights means a diminution of parental authority, however slight. A diminution of parental authority cannot be taken lightly, given the strains on family relationships that already exist. No legal relationship is wholly sacred, but very good reasons must be found for changing the parent-child relationship before a Uniform Act should be entertained.

None of these issues mean a negative determination with respect to the promulgation of some uniform legislation on this subject. These are simply base-line questions that require good answers before drafting proceeds. And, if drafting proceeds, the answers also determine the scope of the drafting project.

2. If grandparents are to be given access to courts to seek visitation rights, how shall these rights be framed?

Let us presume that the decision has been made to draft. How shall these rights of access to courts be framed? The subject has been proposed in terms of grandparents' rights, although grandparents may receive what may be characterized more as a privilege than a right. In a sense, then, proposing legislation in terms of rights may already misstate the principal concept. Clearly, grandparents wish to have access to their grandchildren because the pain of separation is as great for the grandparents as for the grandchildren, at least hypothetically. But an issue of rights? Maybe not. But even more to the point, law reform pertaining to the parent-child relationship, child custody, and related matters, has had, to date, quite another emphasis. That emphasis is upon the best interests of the child. The custody provisions of the Uniform Marriage and Divorce Act, the jurisdictional standards of the Uniform Child Custody Jurisdiction Act, and every state's most current statutes focus on best interests of the child. This is the significant revolution in family law in our time.

The relevant consideration, in drafting new legislation, may be improvement of adjudications in the best interests of the child, rather than other party rights. That approach may better rationalize an abrogation of the parent-child relationship. Grandparent and extended family contacts with children may be, generally, enhanced in considering best interests of the child. But legislation rooted in the best interests of the child may not quite look like the kind of legislation that advocates of grandparents' rights exactly have in mind.

3. What should be the extent of such legislation?

An extremely important question is the abrogation of the parent-child relationship during an ongoing marriage, as contrasted with making decisions about child custody when the marriage is being dissolved. If grandparents are restricted from access to grandchildren in an ongoing marriage, that means, generally, that it is a mutual parental decision. Should we be subjecting mutual parental decisions made in a whole marriage to adjudication? Can the courts stand in the position of the parents well enough to decide whether the parental judgment is or is not reasonable? Is it in "the best interests of the child" per se to question parental decisions in the whole marriage, and to weaken parental authority? Access to courts establishes a certain kind of power. Will the threat of adjudication influence reasonable parental decisions adversely? These are some of the questions to be raised in permitting adjudication of the grandparent's right or privilege of visitation with grandchildren when the marriage is whole.

When the marriage dissolves, the equities change. Children of divorce are, already, subject to substantial trauma with lasting effect. The conflict between the parents already jeopardizes the child's welfare. In addition, a court and any adjunct services are already involved. The issue of best interests of the child is



already before a court, and the need to call upon all available resources is apparent.

The Uniform Marriage and Divorce Act already takes into account the issue of children's contact with other persons, not just grandparents, in the determination of best interests of the child. Section 401(e) allows the court, upon a showing of good cause, to "permit intervention of other interested parties". In Section 402(3), as a factor in determining the best interests of the child, the court may consider "the interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interest,..." It is pretty clear that discretion resides in the court "in the best interests of the child" to permit intervention of grandparents or other interested parties in the custody proceeding, and to order children's contact with persons other than parents. One of the questions the Study Committee will undoubtedly ask is the sufficiency of these provisions, as they exist, and whether it ought to recommend only that amendments be considered to the Uniform Marriage and Divorce Act.

The death of a parent, remarriage of a single parent, step-parents, adoptive parents, unmarried parents--all raise, more or less, special kinds of problems. The parent-child relationship within each of these categories will have to be analyzed to see what decisions ought to be made. All of these variations on the parent-child relationship bear on the question of the scope of a drafting project. All complicate the decision-making process.

4. If access to courts to adjudicate grandparents' visitation rights is to be permitted, who shall bear the costs of that litigation?

The Uniform Marriage and Divorce Act gives the court discretion to assign one party's costs and attorney's fees to another party, based upon a consideration of the resources of both parties. This is an example of what has been done to allocate costs when they become a financial burden upon one party or another.

Allocation of costs based on available resources is a reasonable approach to the issue, but, when access to courts is given to persons who have never had it to obtain rights or privileges that did not exist in prior law, the allocation issue may change. Are the equities in favor of allocating costs on the basis of resources, for example, or should those parties gaining new access have it on the condition that they are willing to bear the whole costs? The parents face litigation potential that has never been there before. Should they, also, be asked to bear the cost of that litigation? It may be that an appropriate trade-off for the right or privilege of visitation would be assumption of the cost burden.

In the adjudication of custody, it is more and more common for legal counsel or a guardian ad litem to be appointed to represent the child's interests as separate from the interests of any other party. The Uniform Marriage and Divorce Act makes the appointment of legal counsel for the child discretionary to the court in Section 310. Some

states, I believe, have mandatory requirements for representation of the child. Costs are shared by the parents, as the court prescribes.

Grandparent access to the courts may cause some rethinking of this issue. Should there be mandatory representation of the child, even though it is, otherwise, discretionary? What should be the grandparent's share of the costs of this representation? These, again, are questions that will need answers when and if drafting is to take place.

5. If grandparents are to be given access to the courts to obtain the privilege or right of visitation with grandchildren, should there be obligations assessed, as well, for the support and care of the grandchildren?

The parent-child relationship is composed of the rights of parents over children and of their obligations for children. The law is probably more concerned with the obligations than it is with the rights. It recognizes that children are dependent and vulnerable. The greatest struggle today in domestic relations law is the struggle for enforcement of child support obligations. The problem of child support after dissolution of marriage, and the problems of the single parent, in general, should cause policy makers and drafters of Uniform Acts to pause long and hard before extending rights or privileges without reserving the power to assess obligations. If the extended family is to gain legal recognition in any fashion, the duality of relationships - rights and obligations - must be considered.

6. What safeguards should there be for the abuse of any right or privilege granted to grandparents?

Child custody and child support are, already, significant problems in the United States. There may be as many as 300,000 incidents of child-snatching or related kinds of behavior in this country per year. This behavior continues notwithstanding enormous efforts to curtail child custody disputes in the law. Lawyers who deal with custody cases know that disputes are often fueled and financed by extended family members. Sometimes, grandparents finance litigation and aid extra-legal activities.

One of the prime considerations in extending any privilege or right to grandparents will be safeguards against such behavior. Will the access to courts accorded to grandparents encourage and fuel child custody disputes? What means can be put at the court's disposal to discourage such behavior? There is no issue more critical to the protection of children than this one. There are a variety of alternatives, including bonds, that can be considered.

## CONCLUSION

These are some of the issues that I see as inherent in a drafting project of this kind. Other people may be able to identify more issues than I can. Some may disagree with my speculations, as well. But my discussion should give the Subcommittee a fair preview of the concerns that will have to be addressed. I hope the Subcommittee on Separation of Powers will find this information helpful.

98TH CONGRESS  
1ST SESSION

## S. CON. RES. 40

Expressing the sense of the Congress that a uniform State act should be developed and adopted which provides grandparents with adequate rights to petition State courts for privileges to visit their grandchildren following the dissolution (because of divorce, separation, or death) of the marriage of such grandchildren's parents, and for other purposes.

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### IN THE SENATE OF THE UNITED STATES

MAY 24 (legislative day, MAY 16), 1983

Mr. LEVIN (for himself, Mr. STENNIS, Mr. D'AMATO, Mr. ZORINSKY, Mr. HELMS, Mr. RANDOLPH, Mr. MOYNIHAN, Mr. BURDICK, Mr. MATSUNAGA, Mr. INOUE, Mr. HUDDLESTON, Mr. BENTSEN, Mr. HEINZ, Mr. FORD, and Mr. BUMPERS) submitted the following concurrent resolution; which was referred to the Committee on the Judiciary

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## CONCURRENT RESOLUTION

Expressing the sense of the Congress that a uniform State act should be developed and adopted which provides grandparents with adequate rights to petition State courts for privileges to visit their grandchildren following the dissolution (because of divorce, separation, or death) of the marriage of such grandchildren's parents, and for other purposes.

Whereas approximately 75 per centum of all older Americans are grandparents;

Whereas grandparents play a vital role in millions of American families;

Whereas an estimated one million children a year experience the divorce of their parents;

Whereas the laws of forty-two States (1) provide grandparents with certain rights to petition State courts for privileges to visit their grandchildren after the dissolution (because of divorce, separation, or death) of the marriage of such grandchildren's parents, and (2) allow such courts to grant such visitation privileges if such courts consider it in the best interests of such grandchildren;

Whereas such procedural rights to petition State courts often do not provide grandparents with adequate opportunities to be fully heard with respect to the granting of such visitation privileges;

Whereas the factors considered by State courts in determining whether the granting of such visitation privileges is in the best interests of the children involved varies widely among such States;

Whereas the ability of grandparents who have meaningful relationships with their grandchildren before the dissolution (because of divorce, separation, or death) of the marriage of such grandchildren's parents to help satisfy such grandchildren's needs for continuity of care and familial ties after such dissolution is often not fully taken into account in determining the best interests of such grandchildren;

Whereas the lack of uniformity among the laws of States with respect to such visitation privileges adversely affects the ability of grandparents to enforce and exercise such visitation privileges once granted by a court because of the interstate movement of the parties involved;

Whereas four national grandparents' rights organizations have been established for the purpose of focusing national, State,

and local attention on the issue of grandparents' visitation rights; and

Whereas the Subcommittee on Human Services of the House Select Committee on Aging held a hearing on such issue on December 16, 1982: Now, therefore, be it

1        *Resolved by the Senate (the House of Representatives*  
2        *concurring)*, That a) it is the sense of the Congress that—

3                (1) the National Conference of Commissioners on  
4        Uniform State Laws should develop a model State act  
5        which—

6                (A) provides grandparents with adequate  
7        rights to petition State courts for, and to be fully  
8        heard in such courts with respect to the granting  
9        of, privileges to visit such grandparents' grand-  
10       children after the dissolution (because of divorce,  
11       separation, or death) of the marriage of such  
12       grandchildren's parents;

13                (B) ensures that such rights extend to cases  
14       in which, after such dissolution, such parents re-  
15       marry and stepparents adopt such grandchildren;  
16       and

17                (C) establishes procedures for the interstate  
18       recognition and enforcement of State court orders  
19       granting such visitation privileges; and

20                (2) States should adopt the model State act so  
21       developed.



1 (b) It is the sense of the Congress that the Secretary of  
2 Health and Human Services, through the National Center for  
3 Child Abuse and Neglect, should provide technical assistance  
4 to States in developing, publishing, and disseminating guide-  
5 lines which—

6 (1) may be used in determining the “best interest  
7 of the child” in cases in which the grandparents of  
8 such child seek privileges to visit such child after the  
9 dissolution (because of divorce, separation, or death) of  
10 the marriage of such child’s parents, including cases in  
11 which such privileges are sought in situations described  
12 in subsection (a)(1)(B); and

13 (2) take into account the ability of grandparents to  
14 help satisfy such child’s need for continuity of care  
15 after such dissolution.

Senator EAST. Before turning to the witnesses this morning I would like to welcome this morning as our first recognized participant my distinguished colleague, the Senator from Michigan, Senator Carl Levin.

Senator Levin, we welcome you here this morning and we will be happy to hear what you have to say. Because this is the concluding week of a final session, I understand your need to move on not because of your lack of interest in the subject, but simply because of the variety of things and obligations that you will have today.

So I would like to recognize Senator Levin, the distinguished Senator from Michigan, to this subcommittee.

#### STATEMENT OF HON. CARL LEVIN, A U.S. SENATOR FROM THE STATE OF MICHIGAN

Senator LEVIN. Thank you, Mr. Chairman, and first let me tell you how grateful the grandparents, and I think the grandchildren, of America are for your willingness to hold this hearing and to at least consider the possibility of recommending to the Commissioners on Uniform State Laws that they adopt a uniform State law for consideration by the State legislatures of this country. I emphasize "consideration" because uniform State laws are not binding on any States; they are offered to the States as a model law, and then it is up to each State as to whether or not the model law is adopted. And I think that fits very much with both of our sensitivities to the rights of States in these areas of families.

There are now 26 cosponsors, Mr. Chairman, of this resolution, making this a sense-of-the-Senate recommendation to the uniform law commissioners to adopt such a uniform law. And these 26 cosponsors reflect a broad cross section of the Senate; it is a bipartisan resolution, and it has obviously a great deal of support that we go at least this far in expressing our sensitivity to the needs of grandparents. And, as I will state again in a moment, to the needs of grandchildren to be with their grandparents where that family has for some reason been—the nuclear family—has in some way been broken up.

Mr. Chairman, I have heard from grandparents all over this country, and a number of them are with us today, with disturbingly similar stories—and they are pleading to see their grandchildren. And if you could hear from the grandchildren this morning, I think you would also hear pleas from the children to see their grandparents.

I know about a couple from my own State of Michigan who have been in and out of the courts since 1979 fighting for the right to visit their grandson. After their son had died, the daughter-in-law's new husband adopted the grandson and prohibited the grandparents from visiting the boy. The grandparents lost not only a son but in effect they also lost a grandson. This issue is of vast importance to literally hundreds of thousands, if not millions, of grandparents and grandchildren in this country. And a statement that I will ask to be incorporated in the record contains other examples of grandchildren and grandparents from around the country that have had painful experiences in trying to see each other.

A number, as I have indicated, are here with us this morning, including the Sumpters from Michigan who, along with Richard Victor, have brought this problem to my attention in the first place, and are the reason why I am here today sponsoring with 26 others this measure to urge the uniform law commissioners, the National Conference of Commissioners on Uniform State Laws, to develop this uniform State act to provide grandparents with adequate rights to petition State courts, just to have standing to petition State courts for privileges to visit their grandchildren following the dissolution of the marriage of the grandchildren's parents, or following death or any of the other reasons why the family is in some way broken up.

Again, I emphasize that this is a first step, a voluntary step, a nonbinding step on the States, but a way of expressing the feelings of the Congress and the grandparents and grandchildren of this country that we should make some progress toward recognizing the needs of grandparents and grandchildren to see each other where the family has been broken up.

Mr. Chairman, I know of your love for the nuclear family and of the values that are involved in that tradition in this country, and I know of your dismay—and, may I add, my dismay at the divorce rate in this country and at the number of families that are being broken up. And one of the great losses, and there are many involved when a family breaks up, one of the great losses, most painful losses, is the inability too often of grandchildren and grandparents to see each other.

I am going to ask that my statement be incorporated in the record, but I must add one personal note before I close, and that has to do with my children and their grandparents. I have watched that relationship. It is a relationship of deep affection, abiding affection, of great love. My children appreciate their grandparents; they call their grandparents, they write their grandparents, they see their grandparents whenever they can, even though they are in different parts of the country, on their own, not because we are telling them all the time, hey, call grandma and call grandpa—because they deeply love their grandparents.

My children are better kids and will be better adults because of the love and affection of their grandparents for them. Parental love is critical, sibling love is critical, love of friends is critical—but I know of no relationship more pure, more abiding, and more affecting and more influencing on the character of children than that of the grandparents for those children.

And if we, without violating the rights of States, can push this process a little bit forward, with just simply suggesting that a model law be created to try to eliminate some of the chaos and confusion and hodgepodge which exist relative to parental rights, grandparental rights, in this country, we would be doing a service which is consistent with our own values and our own beliefs in the rights of those States, because there are complex differences obviously in this country, and we don't want to necessarily impose anything on the States; we simply want to offer the States an opportunity to adopt a model law, which other States have also adopted, so the grandparents and their grandchildren can perhaps get together. Again, it is children's rights, not just grandparents' rights, that



we are talking about here. The victims, as you point out, are the grandparents, in your opening remarks—they are so true—and the victims are also the grandchildren, and I know the Chair would agree with me so much on that.

Senator EAST. Yes.

Senator LEVIN. The Senate has an opportunity here, consistent with its own traditions and its own values—and I hope that we will grab that opportunity and that, as you listen to these witnesses today, that you will see that what is being proposed is a very modest way of reflecting the values which you and I think all the Members of the Senate uphold so strongly.

And, finally, could I ask the Chair to incorporate in the record the list of existing uniform State laws, model acts—there is over 100 of them which have been proposed to the States, including, may I say, for the Chair, a uniform adoption act, a uniform child custody jurisdiction act, a uniform divorce recognition act, a uniform juvenile court act, a uniform marriage and divorce act, a uniform paternity act, a uniform reciprocal enforcement-of-support act, and so forth—many acts have been proposed to the States, and I would like to have the record reflect a list of those acts so that we can see that we are not plowing totally new ground when we recommend to the commissioners that they adopt this model act.

Senator EAST. The record will please show, then, that the requested materials that the Senator mentions are made a part of the permanent record of these hearings.

Senator LEVIN. And, again, I thank my friend and congratulate him on his willingness to proceed with these hearings. I know his sensitivity to the area of family; there is no greater spokesman for the family in the Senate than our chairman, and I think he will find what is being proposed here totally and fairly consistent with his own very deeply felt beliefs in that area.

Senator EAST. Well, you have been very eloquent in your statement, Senator Levin, and I think you did make an excellent point that this involves not only the rights of grandparents, but the rights of the grandchildren and continuity of the family, as well. Traditional family values, which have meant so much to the western heritage and to the American tradition, have been much imperiled in recent years. That is a separate problem we cannot solve, but in the meantime I would agree with you there is no reason why either grandparents or grandchildren ought to be the victims of this particular trend. I also agree that government presently seems unable to offer any sort of help or relief. I think you stated it very eloquently, and we thank you for coming. And if you have no further comments to make, you may stay, if you wish but if you find you must leave, certainly we will understand that the press of Senate business often carries us off to other tasks.

Senator LEVIN. Thank you, sir.

Senator EAST. Thank you, Senator, we appreciate your coming.  
[The following was received for the record:]

## PREPARED STATEMENT OF SENATOR CARL LEVIN

As sponsor of Senate Concurrent Resolution 40, the Grandparents Rights to Visitation Act, I am pleased to be given the opportunity to highlight, and more importantly, clarify the major provisions of this measure.

We are here today to address the issue of grandparental visitation rights. While the issue is relatively new to Congress, it is certainly not new to thousands of grandparents and grandchildren who find themselves involved in disputes that threaten the bond of love and companionship shared between grandparents and grandchildren.

I've heard from grandparents from all over the country -- all with disturbingly similar stories and all who are pleading to see their grandchildren. I know about a couple from my state of Michigan who have been in and out of courts since 1979 fighting for the right to visit their grandson. After their son had died, the daughter-in-law's new husband adopted the grandson and prohibited the grandparents from visiting the boy. The grandparents not only lost a son, they also lost, in effect, a grandson.

Another couple from Vermont were denied visitation rights with their only two grandchildren. When the grandchildren's parents divorced, the daughter-in-law banned the grandparents from seeing the children. This grandparent couple had no legal recourse because Vermont is one of three states without a visitation statute.

The stories are painful and the problems are endless.

The measure before you is a pro-family measure. It is a

VOLUNTARY measure leaving VOLUNTARY implementation to the states. S.Con.Res.40 expresses the sense of the Congress that the National Conference of Commissioners on Uniform State Laws develop a uniform state act which, if implemented by the states, provides grandparents with adequate rights to petition state courts for privileges to visit their grandchildren following the dissolution of the marriage of the grandchildren's parents. Once the proposed uniform law is developed, it is hoped that all fifty states will adopt it.

The National Conference of Commissioners is composed of Commissioners from each of the states, the District of Columbia and Puerto Rico. The Commissioners are chosen from or are connected with the legal profession and serve without compensation. The object of the National Conference, as stated in its constitution, is "to promote uniformity in state laws on all subjects where uniformity is deemed desirable and practicable." Each uniform act that is developed is then recommended for general adoption throughout the jurisdiction of the United States. Again, it is up to the states to adopt it.

This resolution is an attempt to bring about uniformity among state laws.

Because of the vast differences in 47 existing statutes, confusion results as to the present status and interpretation of existing laws.

In addition to the confusing and complex differences among state laws, the shifting status of the law within each state also indicates that it would be beneficial for state legislators to have a model statute to consider. In my state of Michigan, for example, it currently has a relatively liberal grandparents visitation statute. However, the eleven years prior to its passage were characterized by fluctuating visitation rights.

I would like inserted at this point in my testimony a brief history of Michigan's visitation statute showing the law's progression.

INSERT: (In 1971, the Grandparent Visitation Statute (MCLA 722.27(a)) was passed, allowing grandparents to petition for visitation rights upon the death of their child, provided that the court found it to be in the best interests of the grandchild. On January 16, 1979, the Michigan Court of Appeals held that the Michigan Adoption Statute (MCLA 710.60), which severed all legal ties between grandparents and child upon the death of one parent and adoption by a stepparent, took precedence over the 1971 law. Thus, grandparents had no legal recourse to petition the court for visitation of their grandchildren in cases of stepparent adoption. (Bikos v. Nobliski, 88 Michigan App 157 (1979); Bikos, supra)

In 1980, the Michigan Adoption Statute was amended (MCLA 710.60 as amended) to preserve a child's natural blood line unless parental rights had been terminated voluntarily or by the court before death. Grandparents would therefore not lose their legal standing as grandparents unless adoption followed the termination of parental rights.

In addition, in 1980, the Michigan Child Custody Statute (MCLA 722.27 as amended) was amended to provide that the courts consider the 'reasonable visitation of maternal or paternal grandparents.' While the legislative intent of this law was to increase the rights of grandparents, the amended section was placed after a preamble which stipulated that visitation only be considered during or after a custody dispute. Furthermore, the Michigan legislature repealed the 1971 Grandparent Visitation Statute. In December of 1982, a new statute was passed allowing grandparents to petition for visitation rights in cases of

divorce, death, separation, or stepparent adoption. The best interests of the child is still the foremost concern when considering the approval of visitation rights. The new law does not deal with cases where dissolution of the nuclear family has not occurred.) END OF INSERT

At the federal level, Congress has no general authority to legislate in this area, but it can urge the National Conference of Commissioners on Uniform State laws to develop a model act that allows grandparents to petition the courts for visitation privileges.

The only uniform act which currently involves the subject of custody and visitation is the Uniform Marriage and Divorce Act which states that a non-custodial parent must be allowed 'reasonable' visitation rights unless this would endanger the child's physical, mental, moral, or emotional health. While grandparental visitation is not mentioned, some cases decided under this section have authorized such visits even in the absence of specific statutory language.

The proposed model grandparental visitation act would not have the power of law or regulation unless it were adopted by a state. It would not set conditions for the receipt of federal aid. It would simply be model state legislation, all or parts of which individual state legislatures may choose to enact into law, or choose not to enact into law.

The House of Representatives took action in this area when it held hearings before the Subcommittee on Human Services on December 16, 1982 and again in New York on April 8, 1983. In his December 16, 1982 introductory statement, Subcommittee Chairman, Mario Biaggi, assessed the nature of the problem this way:

"Today in America, approximately seventy percent of older people in the United States have grandchildren. Statistics reveal that women become grandmothers at approximately fifty years of age, and men become grandfathers around age fifty-two. Based on current life expectancy, this can leave as much as a twenty to thirty year period for the development of meaningful relations between grandparents and grandchildren. That is the positive side of the coin.

On the negative side, over one million children a year experience the divorce of their parents . . . a startling forty-eight percent of those married in 1970 will eventually divorce. Most people who get divorced will remarry in many instances within three years. These contemporary shifts in divorce and remarriage are radically changing the character and structure of the family as we know it."

Today's grandparents have encountered these changes and continue to face new and different challenges. It is appropriate that the Congress should do whatever it reasonably can to facilitate action by the states which would ease for grandparents the adjustment to these changed circumstances. Senate Concurrent Resolution 40 would set in motion such a voluntary process, and I urge the committee to give its favorable consideration.



## EXPLANATION

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New Volumes 7 and 7A of the Master Edition of Uniform Laws Annotated contain the text of the following Uniform Acts:

### Volume 7

Arbitration Act  
 Common Trust Fund Act  
 Condominium Act  
 Consumer Credit Code (1968 Act)  
 Consumer Credit Code (1974 Act)

### Volume 7A

Consumer Sales Practices Act  
 Deceptive Trade Practices Act (1966 Act)  
 Deceptive Trade Practices Act (1964 Act)  
 Division of Income for Tax Purposes Act  
 Federal Tax Lien Registration Act  
 Fiduciaries Act  
 Fraudulent Conveyance Act  
 Land Sales Practices Act  
 Management of Institutional Funds Act  
 Principal and Income Act (1962 Act)  
 Principal and Income Act (1931 Act)  
 Residential Landlord and Tenant Act  
 Securities Act  
 Simplification of Fiduciary Security Transfers, Act for  
 State Antitrust Act  
 Supervision of Trustees for Charitable Purposes Act  
 Trustees' Powers Act

These acts were drafted by the National Conference of Commissioners on Uniform State Laws and recommended for adoption in all states. These new volumes combine the Uniform Acts relating to business and financial topics for convenient reference to the text of such statutes and the up-to-date judicial constructions thereof in all of the adopting jurisdictions.

### NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM LAWS

The National Conference of Commissioners on Uniform State Laws is composed of Commissioners from each of the states, the

## EXPLANATION

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New Volumes 9 and 9A of the Master Edition of Uniform Laws Annotated contain the text of the following Uniform Acts:

### Volume 9

- Abortion Act (Revised)
- Adoption Act
- Alcoholism and Intoxication Treatment Act
- Child Custody Jurisdiction Act
- Civil Liability for Support Act
- Controlled Substances Act
- Divorce Recognition Act
- Drug Dependence Treatment and Rehabilitation Act
- Duties to Disabled Persons Act

### Volume 9A

- Juvenile Court Act
- Marriage and Divorce Act
- Minor Student Capacity to Borrow Act
- Narcotic Drug Act
- Parentage Act
- Paternity, Act on
- Reciprocal Enforcement of Support Act

These acts were drafted by the National Conference of Commissioners on Uniform State Laws and recommended for adoption in all states. This new edition combines the sixteen Uniform Acts relating to matrimonial, family and health laws for convenient reference to the text of such statutes and the up-to-date judicial constructions thereof in all of the adopting jurisdictions.

### NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM LAWS

The National Conference of Commissioners on Uniform State Laws is composed of Commissioners from each of the states, the District of Columbia and Puerto Rico. In thirty-three of these jurisdictions the Commissioners are appointed by the chief executive acting under express legislative authority. In the other jurisdictions the appointments are made by general executive



## EXPLANATION

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This new Volume 11 of the Master Edition of Uniform Laws Annotated contains the text of the following eleven Uniform Acts:

- Attendance of Witnesses From Without the State in Criminal Proceedings, Act to Secure
- Crime Victims Reparations Act
- Criminal Extradition Act
- Criminal Statistics Act
- Mandatory Disposition of Detainers Act
- Military Justice Code
- Motor Vehicle Certificate of Title and Anti-Theft Act
- Post Conviction Procedure Act
- Rendition of Accused Persons Act
- Rendition of Prisoners as Witnesses in Criminal Proceedings Act
- Status of Convicted Persons, Act on

These acts were drafted by the National Conference of Commissioners on Uniform State Laws and recommended for adoption in all states. This new edition combines the eleven Uniform Acts relating to criminal law and procedure in one volume for convenient reference to the text of such statutes and the up-to-date judicial constructions thereof in all of the adopting jurisdictions. The text of the new Uniform Rules of Criminal Procedure and the Model Penal Code will be found in Volume 10 of the Master Edition of Uniform Laws Annotated.

### NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM LAWS

The National Conference of Commissioners on Uniform State Laws is composed of Commissioners from each of the states, the District of Columbia and Puerto Rico. In thirty-three of these jurisdictions the Commissioners are appointed by the chief executive acting under express legislative authority. In the other jurisdictions the appointments are made by general executive authority. There are usually three representatives from each jurisdiction. The term of appointment varies, but three years is the usual period. The Commissioners are chosen from the legal profession, being lawyers and judges of standing and experience, and teachers of law in some of the leading law schools. They are united in a permanent organization, under a constitution and by-laws, and meet in Annual Conference in the same

## EXPLANATION

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New Volumes 12 and 13 of the Master Edition of Uniform Laws Annotated contain the text of the following twenty-two Uniform Acts:

### Volume 12

Acknowledgment Act  
Aircraft Financial Responsibility Act  
Certification of Questions of Law Act  
Contribution Among Tortfeasors Act  
Declaratory Judgments Act

### Volume 13

Eminent Domain Code  
Enforcement of Foreign Judgments Act  
Evidence, Uniform Rules of  
Facsimile Signatures of Public Officials Act  
Foreign Money Judgments Recognition Act  
Interstate and International Procedure Act  
Jury Selection and Service Act  
Motor Vehicle Accident Reparations Act  
Perpetuation of Testimony Act  
Photographic Copies of Business and Public Records as Evidence Act  
Preservation of Private Business Records Act  
Public Assembly Act  
Recognition of Acknowledgments Act  
Single Publication Act  
Statute of Limitations on Foreign Claims Act  
Statutory Construction Act  
Voting by New Residents in Presidential Elections Act

These acts were drafted by the National Conference of Commissioners on Uniform State Laws and recommended for adoption in all states. These new volumes combine the twenty-two Uniform Acts relating to civil procedural and remedial laws for convenient reference to the text of such statutes and the up-to-date judicial constructions thereof in all of the adopting jurisdictions.

## EXPLANATION

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New Volumes 13 and 14 of the Master Edition of Uniform Laws Annotated contain the text of the following Uniform Acts:

### Volume 13

Eminent Domain Code  
 Enforcement of Foreign Judgments Act  
 Evidence, Uniform Rules of  
 Exemptions Act  
 Facsimile Signatures of Public Officials Act  
 Foreign Money Judgments Recognition Act  
 Insurers Liquidation Act  
 Interstate and International Procedure Act  
 Jury Selection and Service Act  
 Land Transactions Act

### Volume 14

Metric System Procedure Act  
 Motor Vehicle Accident Reparations Act  
 Perpetuation of Testimony Act  
 Photographic Copies of Business and Public Records as Evidence Act  
 Preservation of Private Business Records Act  
 Public Assembly Act  
 Recognition of Acknowledgments Act  
 Simplification of Land Transfers Act  
 Single Publication Act  
 State Administrative Procedure Act  
 Statute of Limitations on Foreign Claims Act  
 Statutory Construction Act  
 Trade Secrets Act  
 Vendor and Purchaser Risk Act  
 Voting by New Residents in Presidential Elections Act

These acts were drafted by the National Conference of Commissioners on Uniform State Laws and recommended for adoption in all states. These new volumes combine twenty-five Uniform Acts relating to civil procedural and remedial laws for convenient reference to the text of such statutes and the up-to-date judicial constructions thereof in all of the adopting jurisdictions.

CARL LEVIN  
MICHIGAN

## United States Senate

WASHINGTON, D.C. 20510

October 21, 1983

The Honorable John East, Chairman  
Subcommittee on the Separation of  
Powers  
Senate Committee on the Judiciary  
Washington, D.C. 20510

Dear Mr. Chairman:

We urge your support for Senate Concurrent Resolution 40, the Grandparents Rights to Visitation Act. In light of the upcoming hearing you scheduled for November 15, we would like to extend our appreciation for the hearing and clarify some of the major points of the Resolution.

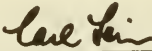
This Act would request the National Conference of Commissioners on Uniform State Law (which is a non-governmental entity that promotes uniformity in state laws) to develop a model act to provide grandparents with adequate rights to petition state courts for privileges to visit their grandchildren following the dissolution of the marriage of the grandchildren's parents.

It is of paramount importance to note that the proposed model would not have the status of law or regulation and it would not set conditions for the receipt of federal aid. Senate Concurrent Resolution 40 is not binding on the states. Under this model act, states would have the option to adopt all, parts, or none of it.

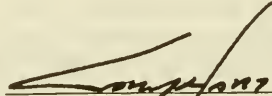
Grandparent groups, senior citizen organizations, and concerned individuals join us in our support of this measure.

We thank you for scheduling a hearing and urge your favorable consideration of this legislation. Your support would be greatly appreciated by not only those of us who have shown bipartisan support, but also by grandparents who anxiously await your decision.

Sincerely,



Carl Levin



Gary Hart

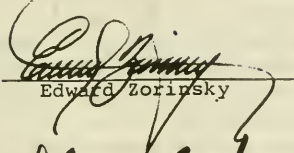


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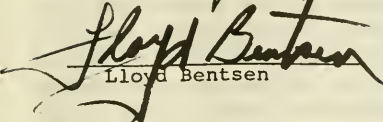


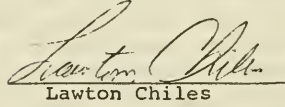
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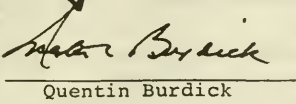
The Honorable John East  
Page 2

  
Edward Zorinsky

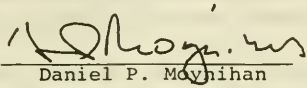
  
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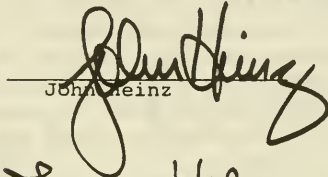
  
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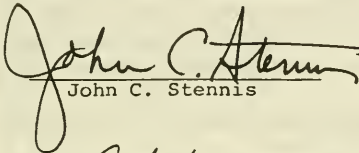
  
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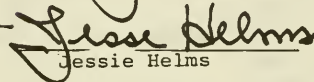
  
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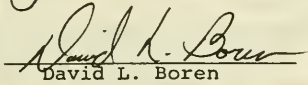
  
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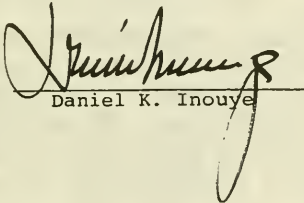
  
John Heinz

  
John C. Stennis

  
Jessie Helms

  
David L. Boren

  
Alfonse D'Amato

  
Daniel K. Inouye

  
Wendell Ford



Senator **EAST**. Our first panel this morning, if they would please come up and take their positions at the table in the order in which they are listed here: Dr. Arthur Kornhaber, president of the Foundation for Grandparenting from Mount Kisco, N. Y.; and Lee and Lucille Sumpter, Grandparents'-Children's Rights, Inc., of Haslett, Mich.; Mrs. Roberta Teverbaugh from Richland, Wash.; and Mr. and Mrs. Martin G. Highto from Baltimore, Md.; then Mr. Richard Victor, attorney at law from Birmingham, Mich.

So I welcome all of you this morning, and I appreciate your taking the time and the effort to come. I think you have seen in my statement as well as Senator Levin's that your concerns will be looked upon in a positive and favorable way before this subcommittee and I hope before the Committee on the Judiciary as a whole, and ultimately before the Senate.

To get back to some mundane problems of time, there are, let me just explain, a few of the ground rules we need to follow.

First, I would like to make it clear to all of you that any written statement that you have will be made a part of the permanent record and will be available to Senators and their staffs, so it is not necessary that things be read in toto.

I will give each person 10 minutes to talk. I think it's most helpful if you can speak extemporaneously from the heart on your concern; if you do wish to read, please read selectively, and briefly. In this manner we can have some brief discussion of all your comments, including questions I might have or points that you might wish to raise.

And I might note that we will apply these ground rules to all of the other panels.

I would like to welcome Dr. Arthur Kornhaber, president of the Foundation for Grandparenting from Mount Kisco, N.Y., and, Doctor, we are delighted to have you here this morning with us.

**STATEMENTS OF ARTHUR KORNHABER, M.D., PRESIDENT, FOUNDATION FOR GRANDPARENTING, MOUNT KISCO, N.Y.; LEE AND LUCILLE SUMPTER, GRANDPARENTS'-CHILDREN'S RIGHTS, INC., HASLETT, MICH.; ROBERTA TEVERBAUGH, RICHLAND, WASH.; MARTIN G. AND GERRIE HIGHTO, BALTIMORE, MD.; AND RICHARD S. VICTOR, ATTORNEY AT LAW, BIRMINGHAM, MICH.**

Dr. KORNHABER. Thank you, I appreciate the privilege of appearing before your subcommittee.

I am here primarily, sir, as a physician, a child psychiatrist and former family practitioner, working in a clinic that treats 200 to 500 families a week.

Ten minutes is only a brief time to fully share what I have learned from 8 years of the research into the relationship between grandparents and grandchildren with you. The results of this research appeared in a book I wrote with Mr. Ken Woodward of Newsweek entitled "Grandparents-Grandchildren, the Vital Connection."

The question before us is, should government get involved in grandparent visitation rights? Since I am a physician, I can answer the question in medical terms. The answer is yes, we need a uniform visitation law. Up to 2 years ago I really didn't have much of

an opinion about this issue although I had done 6 years of in-depth research with grandparents and grandchildren and parents. But in the last 2 years I became convinced that this law is critically important, not only for the sake of grandparents and grandchildren but for the sake of parents, who are unknowingly cutting themselves off from their own and their children's living ancestors.

Our research, has shown that grandparents and grandchildren are very special to one another. Grandparenting gives elders a role for old age, in a society like ours that does not have a role for old age. Grandparents supply parents an emotional welfare system that insulates parents from government and institutions by supporting them in adverse times. The design illustrates this. The first design shows how the family functions alone in the three-generational system, how autonomous and independent they are, and how they use social institutions, day care centers, and old folks' homes as a last resort. The second design shows the contemporary family, is totally disconnected—grandparents from parents from grandchildren—use social and government institutions, day care centers, and nursing homes instead of family when they are in need.

I feel that it is imperative that as a people we make a statement that we are a Nation of families and that grandparents and great-grandparents have a role in our society, and that their role is to support all generations and this gives meaning to their own lives. This is a natural system.

We have discovered, in the past 2 years, there are two main types of family structures in America. There is a natural family structure, emotionally connected, which follows the organic system of one generation telescoping from another, a child, two parents, and four grandparents, which is a natural support system. There is also a disconnected family type. We found that 85 percent of the 1,000 grandparents in our study—85 percent—left the rearing of the grandchildren to their children, and that because of selfishness, narcissism, work, or mobility, they really were not interested in their progress. We are currently finding in our research study that unwanted pregnancies, child abuse, increased suicide rate, school failures, are all linked to the disintegrating three generational family. Grandparenting is ignored in America.

American elders do not know the importance of the grandparent role; most parents don't think about the fact that they are going to be grandparents someday—they are not conscious or interested in that fact.

A law stating the fact that grandparents are important and unique will raise the national consciousness concerning this issue.

Such a law will make a powerful social statement and obviate the need for the use of the law. Contradictory as it may seem such a law will prevent the emotional carnage that takes place in the courts between parents and grandparents. Knowing that they cannot be emotionally divorced, parents and grandparents will have to work on improving this relationship.

The grandparent issue is a symptom, of a larger question: Are we or not a Nation of families?

It is rarely that we are afforded and opportunity to make a powerful social statement about our family life. A solid law is a statement that would be a powerful determinant in reversing the trend

of family disconnection and making a strong statement that the pendulum of family disconnection has swerved far enough. Every time a child is born a grandparent is born. Children are one-quarter the genetic material of grandparents. It is impossible to legislate a biological blood connection out of existence, and for society to be so presumptuous to think that this is possible is absurd. We need a society and a government that fits the way we are. Once we do we will have a happier people, who lead more meaningful and fulfilling lives.

I would like to recite a poem which is very beautiful—and expresses what I fear might happen to all of us if we do not connect the old and young in our society. In our study we showed that when young people don't have one beloved old person, they dehumanize all older people. In "Eichmann in Jerusalem" wherein Hannah Arendt wrote about the eradication of the Jews, she observed that the first thing one does when they want to wipe people out is to dehumanize them. Elders are being dehumanized in America. The majority of American children do not have a beloved older person; they make fun of them and often laugh at them. Kids are not aware they themselves will get old one day. In 20 years we are going to have a lot of old people in our land. We are going to have a lot of young people who will have to support them. Young people who don't know their elders find them useless—a burden. It's horrible to say this, but I can see a time coming when the young can very easily just give their elders soap and towel and say go take a shower like the Nazis did to the Jewish people. This is not beyond possibility. I thought carefully about saying this. To prevent this we have to emotionally connect the old and young in our society. A visitation law makes a powerful statement as a first step. Thus when someone wants to get divorced or is squabbling with the family, such a law coerces all parties to work out their problems rather the divorcing all three generations.

Our study showed that the grandparent-grandchild bond is second most in emotional power to the parent-child bond. Grandparents and grandchildren affect one another because they exist. Miseries passed on from grandparents to parents are not directly passed on from grandparent to grandchild—nature has done something wonderful.

When parents and grandparents are squabbling, grandparents and grandchildren don't have the same problem. Most of the time grandchildren who don't like their grandparents do so only when they are afraid of being disloyal to their parents.

This poem is from Medea she laments her disconnection from her pregnancy.

"What was the purpose, children, for which I reared you? For all my travail and wearing myself away, they were sterile, these pains I had in the bearing of you. Surely, the hopes that I had for me were high ones—you would look after me in my old age . . . and when I die would deck me well with your own hands, a thing which all would have done. Oh, but it is gone, that lovely thought."

This is what is going to happen to many elders in our society in 20 or 30 years, sir, unless we establish a law that establishes an intergenerational society, and teaches the elders of our country



that there is a role for them in our Nation and that can be expressed through their grandchildren.

Thank you.

Senator EAST. Thank you, Doctor, a very moving statement, and I appreciate your conforming to our time limitations, and, again, I stress any materials you have will be made a part of the permanent record.

[The following was received for the record:]

## PREPARED STATEMENT OF DR. ARTHUR KORNHABER

## SUMMARY

The question is: Are we as a nation going to support, cultivate and celebrate the family as the foundation of our society?

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## WHY DO WE NEED A GRANDPARENT VISITATION LAW?

- 1) It raises the public awareness of the importance of the grandparenting role.
- 2) It recognizes that the grandparent-grandchild bond (as our research has shown) is important and indispensable for the emotional well being of all (three or four) generations.
- 3) It validates the importance of emotional attachments between blood relations and makes a statement that these attachments MAY NOT BE LEGISLATED OUT OF EXISTENCE.
- 4) When problems arise between generations this law will serve a preventive function by alerting people about the consequences of their decisions on all three generations.
- 5) When "feuding" family members realize that their connections cannot be legislated out of existence they will be more amenable to settling differences by mediation, thus avoiding the emotional carnage of the courts.
- 6) All three generations will ultimately benefit by keeping some semblance of family attachments, and by respecting the integrity of the grandparent-grandchild bond when parents and grandparents are feuding.

THE ABOVE IS BASED ON EIGHT YEARS OF INTENSE RESEARCH INTO THE NATURE OF THE GRANDPARENT-GRANDCHILD RELATIONSHIP WHICH SHOWED:

- The grandparent-grandchild bond is second only in emotional power to the parent-child bond.
- Grandparents and grandchildren affect one another only because they exist. When relationships are good all family members benefit.
- Problems passed on from grandparents to parents are not directly passed on from grandparent to grandchild (except in pathological circumstances). Nature gives grandparents another chance with their grandchildren. If children do not know their grandparents directly they easily adopt the negative attitudes of their parents toward their grandparents.

-Parents are the linchpin of the grandparent-grandchild relationship. When they respect the integrity of the attachment and foster its growth they benefit abundantly.

- When parents disconnect the generations they suffer deep emotional wounds and compromise themselves in the eyes of their suffering, although silent youngsters.

- No parent need protect their children from healthy grandparents. Thus grandparents and grandchildren have a right to one another unless a grandparent is judged incompetent to handle the relationship...and that may only be temporary.

-Our society has a duty to support, cultivate and celebrate the grandparent-grandchild bond for the benefit of all family members and our nation.

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The passage of a Uniform Grandparents Visitation Law will be a first step in teaching families to work out their interpersonal problems instead of permanently abandoning their relationships. This is especially important as an example to future generations who will be profoundly affected (for good or for bad) by our national attitude toward the family.

The passage of a Uniform Grandparents Visitation Law is a powerful statement that the three (or four) generational family is indeed the foundation of our society and that we have to find ways to make it work better, not to legislate it out of existence.

#### STATEMENT

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WHY IS THIS ISSUE IMPORTANT?

The issue before this committee is not only limited to the issue of grandparent visitation. It is to decide whether or not we are a nation of families and willing to say it for all to hear.

A dangerous New Social Contract has slowly and subtly come into force in this country. It has sheared apart the three-generational family and critically weakened the underpinnings of the nuclear family. Indeed, it threatens the entire emotional and social fabric of our society.

The contract, and it is one that has never been signed, or even orally agreed upon, consists simply of this:

A great many grandparents (85% in our study) have given up their emotional attachments to their grandchildren. They have ceded the power to determine their relationship to the children's parents and, in effect, turned their backs on an entire generation.

Our investigations of more than 1,000 grandparents since 1975 have indicated that this emotional disconnection between the generations, which we have called "The New Social Contract", has had a catastrophic effect not only on the grandparent-grandchild bond but also on the emotional bonds between all family members and even on the relationship between the family and society. The realization that this New Social Contract existed dawned upon us ever so slowly as our investigation into the

nature of the grandparent-grandchild relationship proceeded.\* After we had interviewed the first hundred grandparents and grandchildren<sup>77</sup> at our clinic and at their private homes, it became evident that close grandparent-grandchild relationships ("vital connections") were few and far between. At the present time, only about 15% of those interviewed possess "vital connections". The great majority of the families that we interviewed arranged their lives according to the New Social Contract.

The New Social Contract, or, if you will, the Great Abdication, is a recent historical event that began to unfold during the economic upheavals of the Great Depression, when multitudes of men had to leave their families to find work. This breakdown of the family and its current manifestation profoundly affect the emotional life of all three generations because they have removed grandparents not only from their grandchildren, but from their natural role as involved parents. We call the new arrangement a "contract" because it is an agreement, most often mutual, but usually unstated, between parents and grandparents that grandparents will no longer be involved in the rearing of the grandchildren. In "Vital Connection" we stated that:

"... the evidence provided by such grandparents leads us to assert the existence of a powerful countervailing force which vitiates the instinct to grandparent and, with that instinct, the primordial bond between grandparents and grandchildren. This force is rooted in history, not biology and is manifest by thoughts rather than feelings. We call it "the new social contract." It is social because it is based on attitudes which have been learned and digested from family experience in a changing society. It is contractual because it assumes that parents can and should decide whether and to what extent - grandparents will nurture their grandchildren. And it is new because it has developed within the lifespan of the current generation of grandparents."

The New Social Contract is so powerful that it can be implemented by one party if the other offers no strong protest. The terms of the contract (not mutual support but mutual independence) are both the result and cause of a state of unprecedented animosity between many parents and grandparents unknown to their forbears.

We believe that vigorous action must be taken to nullify this contract which is so full of peril to the emotional life of both family and nation.

#### G) Effects of the New Social Contract

Thus, the basis of the New Social Contract is mutual independence which disrupts family continuity and effectively disconnects grandparents and grandchildren from their vital<sup>\*\*\*</sup> connections to one another. The effects of the New Social Contract are:

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\* Our discovery of the New Social Contract (Kornhaber and Woodward) is explained in Grandparents/Grandchildren - The Vital Connection. Doubleday 1981.

\*\*Children's fears are supported by our own observations and by Helen Kivnick who observed: "in addition to its consequences during childhood, the absence of a meaningful childhood relationship with a grandparent may well limit the richness of the relationships that a given individual will have with grandchildren two generations in the future."

## 1) Relationships Within the Family

The three-generational family is defunct.

Grandparents do not become directly involved in the lives of their grandchildren.

Parents are totally responsible for the rearing of their children and if they default relegate their role to paid "strangers" and social institutions.

Family members form attachments to their "peers" which often replace family attachments.

Family members spend a great deal of time away from one another and often frequent different "worlds".

The role of the old and the young are de-emphasized because they are not in the social "mainstream" and are of little "use". Parents call the shots.

A family member's self image depends primarily on social role and function rather than importance to family and fulfillment of family roles.

Family members easily disconnect from one another if the relationship is difficult.

The family turns to social agencies, institutions or paid "strangers" when others are needed.

## 2) Children

Children are often insecure\* and overly dependent on parents

Childhood is shortened because the burden of child-rearing is often overwhelming to isolated parents without family support\*\*. Thus, "independence" is prized. Children are urged to "grow<sup>up</sup>" quickly.

Children are often resented by parents, who are unsupported or would rather work. Without family to care for children, mothers who find it necessary to work are guilty and reflect this in their attitudes toward their children.

Children isolated from their Elders are susceptible to media learned stereotypes of the elderly and are afraid of old age and often scornful of the elderly. They become "Ageist".

Children from their Elders learn only what their contemporary society wishes them to learn. They have no alternative available through a "vital connection" to an elder.

Children who view disconnection between their parents and grandparents are fearful that they will do the same thing with their parents.

Many of them lose respect for their parents when they see their parents treat their grandparents in a disrespectful manner.

Children with no direct relationship to their grandparents view

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\* In our present clinical study, a pattern is emerging whereby youngsters without grandparent "protectors" are more vulnerable to child abuse and self-abuse...including suicide. In Natural Families, grandparents are the first line of support when children have problems with their parents.

\*\* A 1983 survey on Psychiatric Viewpoints stated "some teenagers seek pregnancy to fill the void in their lives caused by poor family relationships". Roche Viewpoints 1983.



their their grandparents through their parents experience.  
 Children thus trained, use society before family. Their view of family life is a demoralized one.

### 3) Parents

Parents who are disconnected from their own parents are conflicted about the arrangement. They are guilty and angry.\*

They are insecure because there is no family to support them when adversity strikes.

Parents often turn to peers and "groups" to compensate for the lack of natural family ties.

Parents are often disillusioned with family life because the system under which they live is unrewarding and emotionally stressful. We feel that the New Social Contract is an important cause of the high divorce rate.\*\* A nuclear family unsupported by grandparents (and an unsympathetic society) is a fragile structure.

Sorely overburned, parents often resent the generations before and after them...and easily institutionalize them.

### 4) Grandparents

The birth of a grandchild is greeted ambivalently.\*\*\*

Grandparents who are parties to the New Social Contract are out of a job with the three-generational family.

They live in a world inhibited by peers; in the work world or the retirement world. Urie Bronfenbrenner warned:

"... the phenomenon of segregation by age and its consequences for human behavior and development pose problems of the greatest magnitude for the Western world in general and for American society in particular...we cannot escape the conclusion that if the current trend persists, if the institutions in our society continue to remove parents, other adults and older children from the active participation in the lives of children and if the resulting vacuum is filled by the age-segregated peer group, we can anticipate increased alienation, indifference, antagonism and violence on the part of the younger generation in all segments of our society - middle-class, as well as, the disadvantaged."

Grandparents face increasing isolation and alienation from their families and society as they grow older.

The prospect of aging is frightening without a family to care for them.

Altruistic grandparents who subscribed to the New Social Contract

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\* Outstanding pioneers in the field of Family Therapy like Bowen, Haley Minvchin and Whitaker have emphasized that the degree of unresolved emotional attachment between an individual and his parent is the most significant factor in the success of other relationships.

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\*\* Interestingly enough, during the course of study, people have told us that if their Mothers or Fathers (or another important elder) were alive or had not moved away, that they wouldn't have gotten divorced.

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\*\*\* 20% of parents and grandparents adhering to the New Social Contract (living in an Ageist society) do not welcome the new family member. For the working mother it is a burden, for the grandparent an often unwanted "label", or an occupational liability, "too young to be a GP" is often heard.

become bitter and resentful and question the meaning of their own lives when they realize what has happened. Many are angry and frustrated at their present life situation.

Many grandparents adhering to the New Social Contract are involved in movements that urge society to (justifiedly) support them but without recognizing that they have any value to society. The self esteem of many of these grandparents is low and they are easily prone to mental depression. Working grandparents who have disconnected themselves from their families their inevitable retirement. One told us "I know I have burned my bridges with my family."

#### 5) Family and Society

Sociologist Alice Rossi has noted:

"A remarkable shift has occurred during the past decade in society's opinion of the family, from a general endorsement of it as a worthwhile and stable institution to a general censure of it as an oppressive and bankrupt one whose demise is both imminent and welcome. What was once defined a decade ago as "deviant" is today labeled "variant" in order to suggest that there is a healthy, experimental quality to current social explorations into the future "beyond monogamy" or "beyond the nuclear family." Today one is more apt to read that the nuclear family will oppress its members unless couples swap spouses and swing and young adults are urged to rear their children communally or to reject marriage and parenthood altogether."

Families that adhere to the New Social Contract look to society for their individual self-esteem and for emotional and economic support.

They are totally at the whim of current and ephemeral social trends and values.

They are easily "homogenized" into the society having no countervailing ethnic or religious traditions that are usually repositied in the elderly.

Family relationships are often secondary to "social" relationships. Family ties are often viewed as a liability (even embarrassment) in the individual's quest for assimilation and social acceptance.

#### 6) Philosophy: Independence

Since family members are more interested in "individuality and independence" families that abide by the New Social Contract have no philosophy, no *raison d'être* and no "center".

Emotional bonds are viewed as "bondage".

Family attachments, interest and offers to help are viewed as "controlling", "stifling", "meddling" and "intrusiveness".

Family members often shun one another if they feel that society will "judge" their family association in a negative way or it will impede social acceptance. Thus, many second and third generations of immigrants shun their families of origin because they are "ashamed" of them.

Blood ties are not valued, what is valued is individual achievement social success and personal (recreational) pleasure.

People and attachments are easily disposed of when they are no longer "fun". Commitments are avoided. Romanticism, spirituality and children are avoided.

Ethnicity is easily discarded. Families adhering to the New Social Contract are rooted in the present, ignore the past and do not plan for the future. There is no master plan for their existence and thus they are disconnected from spiritual and philosophical issues, (some 60% of the families in the study group were "not religious" while 20% were religious "some of the time".)

#### IV. Commentary - The Fall of the New Social Contract

##### A. The Future Under the New Social Contract

If the New Social Contract is not changed it will result in:

- 1) the continuing erosion of the quality and quantity of deep emotional attachments between family members and the progressive abandonment of children. Family members have become emotionally disconnected from one another. First, fathers left for work, now grandparents are progressively moving further away from the middle generation. Most ominous is the increasing numbers of mothers who are leaving their young to the care of others. Thus, from the very beginning of their lives, emotional connectedness is neither being given nor demonstrated to a great many young children. The New social Contract has created a growing number of individuals who devote their time to the rearing of other people's young. The most powerful human emotional attachment of all, the mother-child bond is now under stress in our culture.
- 2) A second doleful result is the dismemberment of the family and the replacement of basic family functions by businesses and social institutions. When these institutions take hold they assume a force of their own and make it difficult for human and family functions to move back into the gap they created. Breast feeding is a good example of this phenomenon. What was once a substitute for mother's milk has become the predominant form of nourishing the young. Indeed, there was a point when women who wanted to breast feed their own children were hard put to do so. Another example is the boom in "therapy"... which has become a growth business. The inexorable human need for human companionship and the disconnectedness created by the New Social Contract have left a basic human need unsatisfied. This is often exploited by the business of grouping people together for "therapy" or companionship. People will always seek what the natural family offers... free.
- 3) A third and perhaps most harmful result is the progressive de-

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\* It is interesting that several of the teenagers that we interviewed who were born into families adhering to the New Social Contract joined cults, which are RELIGIOUS FAMILIES supplying not only a "meaning" to life but offer "family" attachments.

humanization of our society as people<sup>\*</sup>, trained to be isolated and alienated spend more time with such fruits of technology as television, video games and walkman radios which are not only intellectually seductive but remove the participant from the real-life emotional events that are the fabric of personal attachments. If we take this one step further, it is not difficult to envisage a society where the dehumanized young, emotionally detached from the aged, could find it very easy to institutionalize "euthanasia" for the "useless aged". \*

#### B) Repealing the New Social Contract

The New Social Contract is an arrangement that should not be tolerated in a civilized society and I believe that our society is nearing its threshold of tolerance. It is my opinion that an emotional revolution is beginning in our society that will bring down the New Social Contract. In the recent past, we have seen more and more Americans gaze up from the reflecting pool of their own narcissism to take stock of the state of their emotional world. American fathers are doing this. Long alienated from the nurturing of the children many fathers are re-examining their relationship to the work place and its emotional cost to them. Many young mothers who have gone to work out of desire rather than necessity (in our study) are in the process of re-examining their priorities (when children are involved). But perhaps nowhere is the emotional revolution more evident than in the recent national movement to establish the right of Grandparent Visitation when the child's custodian seeks to divorce grandparents and grandchildren from one another.<sup>\*\*\*</sup> During the course of our research, we came across several grandparents who were fighting for such rights and learned that not only did most states not have laws allowing grandparents who were deprived of their grandchildren to sue for visitation, but that ageist courts with no knowledge of the importance of the relationship would deny visitation on the grounds that it was in the best "interest" of the child. Researching the issue we found that visitation was most often denied because it was either inconvenient to the parent, or to protect the child from the parent's wrath (if the child wanted to visit with the grandparent against the parent wishes).

Since that time thousands of grandparents have banded together and as a result 45 states now have laws that assure grandparents the right to sue for visitation. In addition, a proposition to establish a Uniform States Grandparent Visitation Law has passed through the House of Representatives and is currently waiting a vote by the U.S. Senate. In a nation where the New Social Contract is in full force a handful of grandparents who

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\* See Eichman in Jerusalem - The Banality of Evil - Hannah Arendt.

In an article (Our Elderly's Fate- New York Times Sept. 29, 1983.) Jack

Levin and Arnold Arluke state "American Society may be heading toward a de facto "final solution" to the problem of a growing elderly population".

\*\*An ethic of dehumanization leads to despoilation of the human and environmental ecology.

\*\*\*A phenomena linked to the current high divorce rate and the formation of more and more "reconstituted" families without grandparents.

are committed to their families have spoken out for the importance of family attachments by demanding their right to their beloved grandchildren. One of them summed up the meaning of the emotional revolution well:

" My grandchildren are what my life is all about now. I never thought about it much before...took it all for granted...the family. Then all this divorce around me. Then my daughter got divorced and remarried this man who didn't want to be bothered...too many grandparents he said to my daughter...so he didn't want me to see my grandchildren. I never signed a naper or voted in my life. I never got involved but when things come to this.. when a person like me who is crazy about her grandchildren can't see them any-- more there is no law or person or anything that's going to keep me away from those kids..

There is no power stronger than a mother's love except for the love of a grandmother...the mother's mother...and this society and the television and the magazines and even the kids have gone far enough and it's up to the grandparents..with a lot of love and in the right way to straighten it out..and by God! I am healthy and I've got the time to do it...and I will. "

The Grandparents movement has established the role of grandparents as important and necessary. validated the importance of the three-generational family system and emotional attachments and most importantly taught our young that emotional and family attachments can not be legislated out of existence. This is, in the best sense, a revolt against the terms of the New Social Contract. But these are only the first steps. Even those grandparents fortunate enough to have the money to sue for visitation often lose in court. This is because judges, attorneys and mental health professionals not only are ignorant of the importance of the grandparent-grandchild relationship but also view the issue in terms of the New Social Contract. As a result, grandparent visitation is often forbidden "in the best interest of the child" which upon further exploration is a euphemism that really means that it is in the best interest of the parent...it is the parent who is most disturbed when visitation takes place. Thus, more and more grandparents who were caught unaware and were unwillingly removed from the lives of their grandchildren (through death, divorce, adoption or negative relationships) have re-invested themselves emotionally in their remaining children and grandchildren. Thus, it is becoming more and more common to see grandparents (who subscribed to the New Social Contract with their older children) repealing the New Social Contract with their younger ones. This, in our view is a clarion sign of the emotional revolution and is happening now within the same generation.

### C) Conclusion

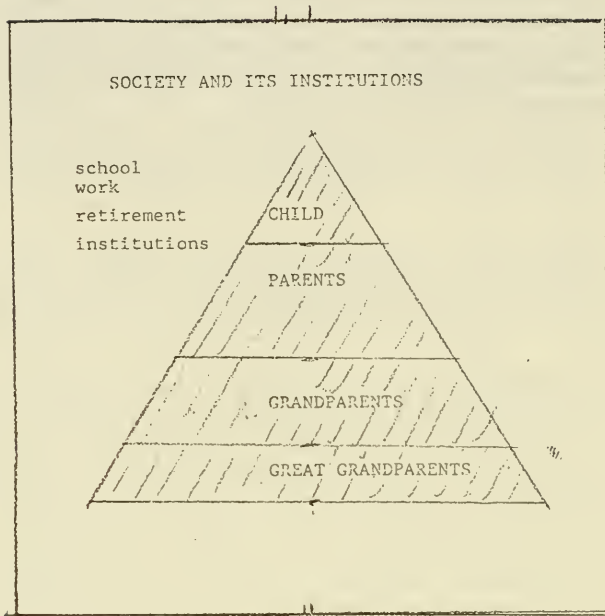
Although the present state of the family is critical, it is far from fatal. Families are, after all, the natural state of man. They are re-created every time a child is born. They can never be biologically extinguished no matter how much they are socially ignored or even disdained.

The resurrection of the emotional attachments and the family is the responsibility of today's middle generation - present and future grand-



parents - in their personal life, family and society. Personally, they can create a family for themselves by honoring their own emotional attachments. Socially, they can create and support a government and a society that supports the family and honors emotional attachments of all family members. With the family as a nucleus, a three-generational society may be forged - a society without age segregation or isolation - where all three generations function harmoniously, loving, caring for and nurturing one another.

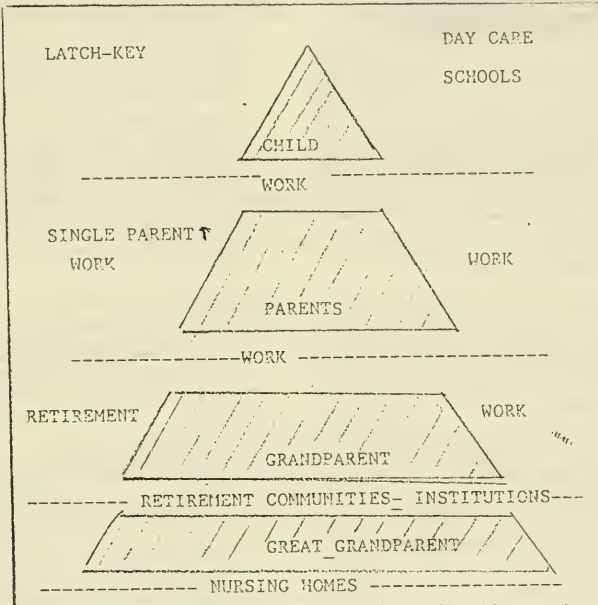
## DESIGN # 1

THE NATURAL FAMILY ARRANGEMENT

ONE GENERATION TELESCOPES FROM THE OTHER. SOCIETY AND  
ITS INSTITUTIONS IS SHAPED TO SUPPORT AND CELEBRATE THIS  
NATURAL STATE OF THINGS.

GENERATIONS SHARE SAME WORLD

## DESIGN # 2



THE NEW SOCIAL CONTRACT  
 EACH GENERATION ISOLATED FROM ONE ANOTHER,  
 DEPENDENT ON SOCIAL INSTITUTIONS  
 GENERATIONAL "DRIFT"- INCREASINGLY LIVING IN  
 DIFFERENT WORLDS.

# GRANDPARENTS GRANDCHILDREN



THE VITAL CONNECTION



ARTHUR KORNHABER, M.D.  
AND KENNETH L. WOODWARD

Recent findings show some disturbing news: Many grandchildren in the U.S. have been abandoned by their grandparents. When the rocking chair on the porch became the dust collector in the attic, where did all of America's grandparents go? Did they find themselves in sunny Florida, on a cruise in the Caribbean, or in a home for the aging?

This breakthrough study in psychology and family relations will strike a major nerve in people of all ages and backgrounds. According to this study, only 5% of U.S. children enjoy a close and regular contact with at least one grandparent. The authors believe that the worst off are not the 15% who never see a grandparent; the worst are those 80% whose grandparents say they love them but seldom bother (some only once or twice a year) to see them. Who is suffering from this detachment? The authors agree that children are suffering. **GRANDPARENTS/GRANDCHILDREN: THE VITAL CONNECTION** is about a current event, the isolation of grandchildren from grandparents.

For the first time, the grandparent/grandchild relationship has been explored in-depth. Hundreds of children reveal in their own words and drawings what loving grandparents mean to them and how they suffer when grandparents ignore or abandon them. The authors probe the deep and heretofore unexplored emotional histories of hundreds of grandparents: how they feel about themselves, their grandchildren, and their loss of function within today's nuclear family. Also included is an "agenda for grandparents" which calls for an emotional and social revolution.

Everytime a child is born, every facet of its life is discussed except one: its relationship to grandparents. What does it take to be a grandparent? How have standards set by society discouraged interaction between grandparents and grandchildren? Today, what opportunities do grandchildren have to be with their grandparents? The authors report, "there seems to be a conspiracy of silence concerning grandparenthood....". **GRANDPARENTS/GRANDCHILDREN** exposes the "new social contract" that is destroying the emotional bonds between grandparents and grandchildren. It challenges many assumptions about emotions, instincts, and the three generational family.

With sharp increases in broken families and working mothers, grandparents are needed more than ever. The authors warn, "that much of the caretaking responsibilities formerly exercised by grandparents as well as by parents have now been turned over to impersonal outsiders: day-care centers, schools, peers and the omnipresent television set. Ours is becoming a society of surrogates: surrogate families, surrogate parents, and surrogate grandparents."

Most important, the authors argue, "to exist is to be connected. No matter how grandparents act, they affect the emotional well-being of their grandchildren, for better or for worse, simply because they exist." The study shows how emotional attachments between grandparents and grandchildren are unique. The authors contend that, "grandparents and grandchildren are naturally at ease with each other while both have intense emotional relationships with the middle generation. In short, grandparents and grandchildren do not have to do anything to make each other happy! Their happiness comes from being together."

**GRANDPARENTS/GRANDCHILDREN** shows, step by step, how grandparents, parents, and children can assess their relationships to one another, and what they can do to establish their vital family connections.

## Foundation for Grandparenting Philosophy

Every time a child is born a grandparent is born too. Genetically, every child is the sum of two parents and four grandparents. Psychologically, every child develops not only in the world of his parents but in the broader world of his grandparents. Thus grandparents supply the natural foundation of the three-generational family pyramid.

Unfortunately, our society does not recognize the importance of grandparents and their "vital connections" to the young. Many grandparents no longer occupy their natural place as the foundation of the three-generational family. They have left "surrogate grandparents" — self-appointed "experts" and paid strangers — to take their place.

This is a task of the Foundation for Grandparenting, a tax exempt not-for-profit corporation. Active and concerned grandparents, involved with their families and communities can reverse this sorry state of affairs.

By establishing vital connections with the young and supporting the middle generations, grandparents can improve the emotional tone in our nation in only one generation.

Our research has shown that grandparenting is the only human function that supplies a pattern whereby the elderly, who fulfill their natural roles as "great parents," can gain the love and respect of their juniors and thus give profound meaning to their own lives.

This is all the more tragic because there are more elders alive today than ever before. In the next sixty years the over-65 population will double. How will today's children who have been abandoned by their grandparents feel about physically and financially supporting generations of their elders who ignored them when they were young? Is there a way of stopping the continual dismemberment of the American family and the emotional abandonment of the young, the confusion of the middle generation and the isolation of the older generation that affects all Americans?

The answer is yes.

It is the goal of the Foundation for Grandparenting to assure grandparents their rightful place in society through

**Education:** raising public consciousness concerning the importance of the grandparent roles.

**Demonstration Projects:** to show how a multi-generational society benefits all people.

**Research:** exploration of the roles that grandparents play for grandchildren, parents and society.

**Support:** consultative and financial support for worthwhile multi-generational projects.

The following are the three major areas of interest for the Foundation at this time.

## Grandparent Visitation Rights

We believe it the right of the child to have access to a beloved grandparent. This is based upon a consistent finding in our research that problems that exist between parent and grandparent are not passed on from grandparent to grandchild (although a child may be profoundly affected by strife between its parents and grandparents). Thus, nature gives grandparents another chance.

Grandparents and grandchildren are becoming separated from one another at an ever increasing rate as the divorce rate increases and more and more families become "blended."

A uniform grandparents visitation law would assure that parental divorce would not be extended into the divorce of children from their grandparents.





## The Centrum Project

The Centrum Project is the current major undertaking of the Foundation. The Centrum is a multi-generational elementary school. In this combined school and day care center, which operates from 8 a.m. to 6 p.m., children, teachers and elders work and play together. Vital connections are formed between the young and the old simply because elders start school with the youngsters and get promoted with them until the sixth grade. Thus, every youngster has a "grandparent" (and the same one) until the child enters Junior High School.

The Centrum will be located in the heart of the community and everyone will be invited to participate in Centrum life. Not only will the Centrum give "emotional work" to elders but it will give maximum support to working parents who will be secure in the fact that their children will be well cared for by an abundance of elders.

Children will be greatly benefited. With one teacher, five grandparents and twenty children to a class no child will be ignored.

Emotional and learning problems will be dealt with on a consistent and reliable basis. Elders will be trained to deal with special problems and to establish a close relationship with their "grandchild's" parent.

Our goal is to produce a generation of children who have received the attention and love of their elders. We speculate that children educated in the Centrum will feel loved and secure, will be highly socialized, and be deeply rooted in their society. Because they were given so much by loving elders they will not be ageist nor fear old age. They will know other ways of doing things, because they have been taught by elders who lived in other times and other places.

The children, in their turn, will love and care for the elders who cared for them. Our research has substantiated this.

The Foundation is now actively engaged in fund-raising for the first Centrum. Several sites are under consideration.

## Grandparent Network

There are many individuals in different parts of our country who have conceived and implemented multi-generational projects that bring the generations together. The Foundation for Grandparenting is committed to serving as a central clearing house for all related activities. We will publish a

newsletter that will serve to keep Foundation members current on projects, workshops, legislation and important issues. The Foundation is available for problem solving, consultation, workshops, and putting people in touch with one another.

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For the first time, *Grandparents/Grandchildren* examines the nature of the relationship between grandparents and grandchildren and its expression in contemporary American society. The Agenda for grandparents is a clarion call for grandparents to assume their place as the foundation of the three generational family- and tells them how to do it.

# GRANDPARENTS GRANDCHILDREN



THE VITAL CONNECTION



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UNWILLING GRANDPARENT GRANDCHILD DIVORCE  
PREVENTION AND TREATMENT

BY

ARTHUR KORNHABER M.D.\*

Laura and Paul Smith are devoted grandparents who lived down the street from their three grandchildren until four years ago. They haven't seen them since then. They have been prohibited from visiting the children by their son-in-law who, after their daughter's death, moved across town and remarried. Since there is no law in their state by which the Smiths can sue their former son-in-law for visitation rights, the Smiths have lost a beloved daughter and their grandchildren.

Millie, ten years old, and her sister Betsy, nine, spent the first half of their lives living with their mother Elsie at their grandmother's ("Gummy's") house. Their father left their mother shortly after Betsy was born. The children have not heard from him since. Gummy cared for the children while Elsie worked nights as a waitress. The relationship between Elsie and Gummy became strained when Gummy objected to Elsie's life style. Elsie took the children and left Gummy's house when Millie was eight. Since then Elsie has not allowed her mother to see the children. When Gummy went to court to gain visitation rights, the judge was sympathetic but said that it "was in the best interest of the children" that she stay away. To this day the children call Gummy complaining about their mother's behavior. Gummy sends the children presents but they are returned unopened. She has called the social service because the children told her that their mother brings home "strange men" who are "mean" to them. The children told Gummy that they "don't say anything bad to the social lady

\*Arthur Kornhaber M.D. is Medical Director of Pediatric Neuropsychiatric Associates and Founder and President of the Foundation For Grandparenting. He is co-author with Kenneth L. Woodward of "Grandparents/Grandchildren- The Vital Connection".

because Elsie might get mad." Gummy plans to go to court again next year. The children say "we cry ourselves to sleep at night."

Robert Melton is a 70-year-old widower who cared for his three-year-old grandson for two years after the child's parents were killed in an automobile accident. The youngster, Mike, was recently adopted by a well-to-do couple. Mr. Melton has mixed feelings about this: "I'm glad he has a good home, but I don't want to lose him. They are nice people but they don't want me to see Mike again because they want to raise him as their own. They offered me money not to make trouble. I went to see Mike at his nursery school but I was told that I can't do that anymore. They have a court order." Mr. Melton has no legal recourse because there is no law in his state that assures him visitation rights to his adopted grandson. Mr. Melton has become distraught and has recently entered a nursing home.

Millions of American grandchildren are not close to their grandparents. But the Smiths grandchildren, like Millie, Betsy and Mike are unique because their grandparents want to be with them.

Through no fault of their own, both generations - grandparents and grandchildren - have unwillingly become divorced from one another. Indeed, some grandparents are not only divorced from their grandchildren, but have been legislated out of their grandparenthood. The Romeros, a couple in their sixties, lost their grandchildren because, after their son's death, their daughter-in-law married a man who adopted their three grandchildren. Because of the adoption, the Romeros became (through no act of their own) non-grandparents. When they went to court to seek visitation the judge told them that the children had "too many grandparents", and denied visitation. "My grandchildren are going to be raised by strangers," cried Mrs. Romero. "I'm not a grandmother any more."

#### Unwilling Grandparent-Grandchild Divorce Is Becoming More Frequent

Although the exact number of cases is unknown over 1000 documented cases show that unwilling grandparent-grandchild

divorce occurs when parental death or divorce occurs in a family that does not function harmoniously. Less frequently it occurs as a result of the the custodial parents severe emotional problems or involvement with a cult or a "controlling" cohabitant. In all of these situations the custodial parent, by choice or coercion, deprives the young and the elderly of access to one another. The natural three- generational structure of the family is thus altered.

When parents willingly divorce one another grandparents and grandchildren are often unwillingly divorced from one another..

This tragic state of affairs is a biological, social and psychological aberration. This situation is all the more disturbing because it is becoming more and more frequent in our society. The true frequency is unknown because grandparents are hesitant to talk about this humiliating situation. Only recently has the issue emerged because more and more grandparents deprived of their grandchildren are resorting to litigation in order to seek visitation...and more and more states are passing laws to give them the right to do so.

Single parent families and "blended" families are a breeding ground for these situations. Child abuse is a frequent occurrence. Presently, more than 52 percent of American

children live in this type of family setting. In these situations family divorce is often extended to include all three generations..

Until recently grandparents who were divorced from their grandchildren had no way to reunite. Legally, they were in the hands of the child's "custodian." They were unable to petition the courts for visitation rights simply because there were few laws dealing with the situation. Even existing laws were vague and ~~diff~~ differently, from state to state, with the issues of divorce, death and adoption. In one state, grandparents could sue for visitation rights only until the child's custody was designated. Fortunately, this situation is being corrected through the efforts of individuals and organizations (such as Grandparent's-Children's Rights Inc.\*) that are lobbying for a comprehensive law on the issue. Because of their efforts, there are now laws in at least ~~40~~<sup>45</sup> states that give grandparents the right to sue for visitation. Although it may be too late for Mr. Melton, some



grandparents whose grandchildren have been legally adopted can now petition to seek visitation.

Unfortunately, going to court does not automatically assure grandparents the right to visit their grandchildren. Their case has to be won. Although the idea of grandparents fighting to see their grandchildren -- casting parents in the role of "villain" and grandparents in the role of "savior" -- seems to assure an easy victory for grandparents, it doesn't often happen that way. One parent who was fighting against grandparent visitation said: "I never thought I had a chance in court, I mean against grandparents. Apple pie and all that...but I beat 'em."

Why do grandparents, like Gummy, lose in court? One reason is age. The courts reflect society's values, and our society does not honor old age nor understand the importance of the relationship between grandparents and grandchildren. One grandmother who reported the physical abuse of her grandchild to the authorities and social services was described as "disturbed" in writing, by a social worker assigned to the case. This "disturbed" grandmother was eventually exonerated when the child's pediatrician called social services to report that the child was indeed being abused. The young social worker thought that Granny's "disturbance" was due to her "age" or "crankiness" rather than reality. This is not entirely the fault of the young social worker. "Ageism" is a two way street.

Elders have compliantly allowed themselves to be edged out of the social mainstream and devalued. Most grandparents view their grandparents role as frivolous. Our society has laid the burden of rearing children onto the rapidly dissolving "nuclear" family -- Mom, Dad and the kids, living in splendid isolation. More and more mothers are leaving the "nuclear" families to join the work force (out of need or desire) and leaving their children to be raised by paid surrogates. Many grandparents (but not the ones who sue for visitation) have willingly, even eagerly, left their families, singing the oft heard refrain: "I've raised my kids, now it's my turn to enjoy myself."

It is not surprising if the courts feel that children are

not losing too much by being deprived of their grandparents. Human attachments are not valued very highly in America today. The court looks upon these litigious grandparents with a querulous eye.

But these "litigious" grandparents are not the average American grandparents. They know, no matter how difficult their relationships to the middle generations, that family bonds are permanent human connections. Children agree. As one youngster put it: "I can never be apart from my parents or grandparents because we are the same, in our looks and our thinking and our acts. I know that I connect my parents and grandparents and I love them. And I know that they don't get along and that my parents don't like them anymore. And I know that there is only one way that they can really get away from my grandparents. And that is if I am dead."

#### In What Kind Of Families Does Unwilling Grandparent-Grandchild Divorce Occur?

There are no typical families in which this situation occurs. Indeed grandparents who have tumultuous relationships with one of their children often have close and warm relationships with their other children. Our research has demonstrated several of the factors that are common to many of the cases of unwilling grandparent-grandchild divorce.

The first is that there is a long standing interpersonal problem between grandparent and parent. A stormy parent-child relationship has been extended into a difficult grandparent-parent relationship and the grandchildren have been, unhappily, included.

The second factor is a long standing interpersonal problem between grandparents and the spouse of their child. The spouse, who becomes the sole custodian of the child, (through death or divorce of the grandparents child) can easily remove their child from the "despised" grandparent.

The third factor is a stressful event. The stressful event (death or divorce or emotional illness etc.) places a great emotional burden on a fragile relationship. This activates previously unexpressed hostilities and the three generational system, tenuous at best, crumbles.

#### CASE STUDY

This is what happened to the Harrisons who live in

the suburb of Boston. Their daughter, Pearl, who was their "problem child" married Gene while they were both attending a local college. Several years later their first child was born. They moved in with the Harrisons for economic reasons and, a year later, Pearl gave birth to another child. Pearl and Gene began to have "marital problems" and decided to "move to their own place" for "privacy". They both worked full time while the Harrisons cared for the children, often on weekends. The young couple's problems worsened. Gene had an "affair" and Pearl went to a therapist in the hope of "enticing" Gene into marital counseling. The Harrisons became openly critical of Gene's behavior. "They act like my kids are theirs", he said. Gene visited his children less and less frequently. Both parents and grandparents reported that the children were "doing quite well" during this time. Pearl and Gene were divorced on the day of their eighth anniversary. Pearl left Boston for California to "start over". Gene called his children less and less frequently. Pearl returned home four times over the next two years. The youngsters were functioning well at home, in church and at school.

Three years after the divorce Gene called the Harrisons to tell them that he was remarried and was ready to have his children come to live with him. The week after the children went to live with their father the Harrisons learned that their daughter was killed in an automobile accident. At the funeral Gene told the Harrisons that he was angry because the Harrisons had "poisoned the kids minds against me". Gene allowed his children to see their grandparents regularly, at first, but as time passed visitation was decreased. Gene told the Harrisons that the children were "busy" or "too tired". The Harrisons questioned the children about this but the children were "uncomfortable" and wouldn't answer. The Harrisons saw their grandchildren less and less and their relationship to the children became more and more "tense". They received a letter from Gene asking them to "stop sending presents because my wife's child doesn't get such things from her grandparents".

One year after his marriage Gene wrote to the Harrisons (registered letter) saying that their visits were "disruptive" and that they were "bad Mouthing" him and his wife to the children. They were "undermining his role as a father" and he didn't want them to visit the children. He went on to state that the children were confused because of all of the relatives and they had "too many grandparents" now that they were becoming closer to his wife's parents. He was "sorry because the children care for you" but visitation had become too "complicated" and it placed a "strain"

on his marriage. "I want to raise the children without outside intrusions".

During this period the Harrisons became quite upset. They sought out the counsel of friends, clergy, physicians-- anyone who would listen. They received a great deal of "understanding and sympathy" but no one could help them. Their letters were returned unopened. They went to see the children at school. Soon after they received a "notarized letter" ordering them not to see the children at school again because the children were "severely upset" by their visit. The Harrisons persisted in calling the children and Gene became more and more angry at them. Mr. Harrison became enraged. Mrs. Harrison became depressed and began seeing a psychiatrist.

The Harrisons decided to sue for visitation. Their state legislature had recently passed a law allowing grandparents to sue for visitation rights. The trial was a "devastating" experience for all concerned. The media coverage of the trial adversely affect Gene at work and the children at school. The trial became a "cause celebre" for Gene. He talked about "winning" and "beating the Harrisons".

The court decided that it was "in the best interest of the children" that the Harrisons be denied visitation. The decision did not state that the situation could be re-assessed at a future time. The Harrisons had become unwillingly divorced from their grandchildren.

The Harrisons did not know what to do. Should they appeal the case and "re-open our wounds?". Mr. Harrison asked "Have we lost our grandchildren forever? How will they know that we love them?". "The longer that we stay away the less they will know us", cried Mrs. Harrison. Gene said that he hopes "its over". The children said that "our father and our grandparents don't get along". "What can I do" the youngest said, "I'm only a kid".

#### INTERPERSONAL ISSUES IN GRANDPARENT/GRANDCHILD

##### DIVORCE

The case study demonstrates many of the issues that set parents and grandparents against one another. Among the most important interpersonal issues are those of role reversal and control.

Role Reversal - It is obvious that the Harrisons not only played the role of grandparent for their grandchildren but also the role of parent. The Harrisons caretaking role which was con-

venient, even necessary, for Gene at one time was seen by him, when he no longer needed them, to be "usurping" his authority. The Harrisons didn't change - Gene did.

Indeed, an immature parent, seeing his own children having a wonderful time with their grandparents (the parent's parents) can experience strong feelings of jealousy, perceiving his own child as a sibling when grandparents are parenting everybody. Some parents who are not mature enough to act as parents, give their children into the care of grandparents. When the parent is "grown up" and now emotionally ready "to be" a parent, they want their children returned to them but they ignore the strong attachment formed between grandparent and grandchild. They feel they can pick up where they left off with the child. The feelings of the children and the grandparents are rarely considered in these situations since the parents have "social power" and it is "normal" for children to live with their parents. In the extreme, parents who regard their own children as siblings have the power to remove their rivals (the grandchildren) from their parents but at the risk of losing their parents themselves.

Control and Authority - Another important issue is that of control and authority. Since grandparents involved in grandparent/grandchild divorce are usually strong and authoritative personalities, it is difficult for them to assume a supportive grandparent role in the family. Indeed, they do know more about raising children, but they may have difficulty letting their children learn for themselves. The situation is compounded when the grandparent, in reality, like the Harrisons become the primary caretaker of the child. When parents do grow up and want to take over it is difficult for the grandparent to slowly relinquish the responsibility that the young parent now wishes to assume. In cases of child abuse or parental illness it is easy to empathize with the apprehension and concern of the grandparents toward the parent's capabilities and to understand how a guilty parent, anxious to make amends, assumes the grandparent's vigilance as "controlling," "intrusive" or as a "lack of confidence."

Personality Type  
Another important factor is linked to personality. Many people involved in these situations seem to be inflexible and hard put to understand or to listen to one another and modify their



behavior accordingly. One grandfather, denied access to his grandchildren by his son describes this as "cussedness." "I never got along with this son. He was always contrary, not like my other children. Then he upped and joined this so called religion with a bunch of goofballs, and he wants nothing to do with us now." He sighed: "It's just plain cussedness between us."

Social Factors - Social factors play an important part in the unwilling divorce between grandparents and their grandchildren.

The family scenario is not played in isolation. Many "outsiders," such as friends, therapists, and teachers play an important role in the drama. This is very confusing to children who, as a defense often withdraw from the adults around them. They withdraw not only from the altercation between the people they love, but from all of the other people who have entered their lives. Children in these situations often wear false smiles in order that "everyone thinks that I'm doing alright, that all of this is not affecting me." Consider one case where the child's parent remarried. The step-parent became involved in the litigation as well as the parents of the step-parent, the step-grandparents (who desperately wanted the child to love them). There is no end to the people involved.

If both parents remarry, a child could have four biological grandparents and four step-grandparents, in addition to two step-parents - all intimately involved with the issue. The more "blended" the family, the more torn and confused is the child. In litigation, friends, neighbors and relatives are often called upon and enduring animosities are forged.

#### PERSONAL REACTIONS

Everyone suffers from the painful relationships between parents and grandparents - no one is spared.

Children - Children are drawn and quartered between their beloved elders who each believe that he is "right." Children have to deal with the professionals and institutions that grandparents and parents use as allies in their war on one another. They feel humiliated when a private family affair becomes a public issue.

They suffer not only their own distress, but the reflected

distress of their family. "I don't know what to do," a child cried. "I love all of them, and I can't tell Mom that I like my grandparents because she gets mad. Sometimes my grandparents tell me bad things about Mom and it makes me feel terrible, so I don't listen anymore. I block it out: I tell them what they want to hear - all of them."

Children know that they are prizes and pawns in the conflict. "My Mom told me that her mother screwed her up and she didn't want Gramma to do the same to me, but I love Gramma, and I can't tell that to Mom. She doesn't listen. I agree with her to make her happy."

Children often seek the easy way out, relinquishing a grandparent is easier than relinquishing a parent. "What can I do," Millie said, "I have got to stay with Dad because he will live longer, and I can't see Gummy because he gets crazy when I see her and I can't stand that. He feels better when I don't see her."

Many of the children resent their parents: "I don't see how my mother can do this to her mother, be so mean to her. My grandmother was never mean to me and my grandfather is great. I am afraid I might do the same thing to my mother when I get older, I hope not. I can't see my mother as a grandmother anyway."

One young child views herself as "ransom." "My mother tells Grandma that she'd better do exactly as Mom tells her or she can't see me anymore. Mom thinks that Grandma feeds me too much and that she makes me fat. One time Mom didn't let me see Grandma for six months. Grandma said that she would apologize and Mom let me see her. And what they were fighting over had something to do with my aunt and not me. It's like blackmail and I'm the ransom."

For the most part children view their grandparents with compassion. "They are old," said John, 11-years-old, "and they don't have too long to live. I feel sad for them but my father doesn't. I don't see how he can be so mad at two nice people. Sure, they are grumpy sometimes, but that's not a reason to hate them."

Most children become resigned, at least temporarily, to the loss of their grandparents. "Maybe when I get older, I can go see them if they are around. I know my father sends their gifts back and that they can't visit me at school. All I can do is wait."

Grandparents - The loss of their children and their grandchildren is an awesome and frightening experience for grandparents. Most of them were stunned that, what to them seemed like family squabbles, should end like this. "I thought that we just didn't get along too well," one grandmother said. "I never really cared for my son-in-law. Let's say I tolerated him. I never realized how much he hated me. To do this to me."

The blow is even more devastating for grandparents when it is their own child who removes their grandchildren from them. "I raised her children for four years while she was out gallivanting around," a grandfather said. "Then she just came and took them. She is living in the city (one hour away) and won't even tell us where. I never knew she hated us. Sure, I yelled at her a lot when she was coming along. She was always getting into it (trouble). I hate her so for what she is doing to us now. We don't deserve it."

Old age is the worst time to lose one's grandchildren and children. It is the ultimate betrayal and perhaps the ultimate revenge by a child on a parent who the child has resented. Under these circumstances, grandparents become irrational in their thoughts and actions. One grandmother said that she started hearing the grandchildren's voices calling her at night even though she knew "it was all in my mind." Others have become obsessed with seeing their grandchildren to the point of ignoring all else in their lives. The initial shock, and subsequent disbelief and despair soon evolve into anger.

Many grandparents get angry at themselves because they ultimately feel responsible for the problem. One despairing grandmother said: "The awful truth is that my daughter is doing this to me at all. What does this say for me as a mother and a woman? Sure I get along with my other children. I hate to tell myself that my daughter is crazy in order to keep my own sanity, to not jump off of a bridge. Does this happen to good parents? What else hate I done that I am unaware of? Do you understand that I thought I was always a good mother? I don't know what happened."

The loss of their grandchildren was perceived as the loss of a chance to make it up to their own children. "I know I wasn't

the best of fathers," a sad grandfather said. "I was short tempered. Work made me grouchy. I thought I would have a chance to be a good grandfather to my son's children, not to be as harsh or as bossy as I was. I have more time now. And perhaps even get closer to my son through the children. I know I was too harsh on him when he was younger."

Most grandparents become angry at the person who is depriving them of their grandchildren. This is a frustrating situation because the more anger grandparents express - to parents, children or others - the more they are creating a permanent wedge between themselves and their grandchildren. Indeed this becomes a self-fulfilling prophesy - parents say that grandparents are "irrational" and grandparents become more "irrational" because they become increasingly frustrated about being deprived of their grandchildren. This forces them into litigation or depression.

Grandparents learned going to court only made things worse. "This court business is terrible," a grandmother said. "Things are worse now than they were before. All the hate and venom that's coming out in court. Now the family is taking sides and it is in the newspapers. It is out of control. I am saying things I don't mean. And still they won't let us see the children. How deep is their hate? Seeing the way the parents are acting crazy makes me feel that the children need me all the more. I am never going to stop fighting for them..."

Grandparents who are permanently divorced from their grandchildren suffer an irreparable wound. "A lot of life has left me," one grandmother said. "I have to live out my days with this terrible knowledge that I have a grandchild somewhere that I love and can never see and who won't even know me." A grandfather who hadn't seen his grandsons for three years said that he "wished he would die soon. I have aged a hundred years since this all happened. If my daughter wanted to murder me she couldn't have done a better job. Do you know what it is like to feel like this, at the end of your life. All I want is there and I can't have it, ever..."

Parents - Parents suffer the same feelings of guilt and shame and humiliation as their children and their parents but they are less depressed. They describe their strongest emotions as anger.

Most are remorseful that in the course of protecting themselves and their offspring from "bad" grandparents they are not only divorcing grandchildren from grandparents, but putting an end to a family continuum. That is a heavy responsibility to bear. It is not done lightly. One father lamented: "This is an impossible burden to bear. I am a nice person. Who would do such a thing, to destroy a family. To separate children from their grandparents who they like!" He continued: "But it is the only alternative. They do not listen to me about the kids. They countermand my orders. They come and go when they want to. It is the only way. The kids will get over it."

Parents are unaware of the needs of their children and the importance of the grandparent/grandchild relationship. They say the children "will get over it." "I'll make up for it," one mother said.

Parents pressure children to say that it's alright in order to assuage their own ambivalence about separating them from their grandparents. "My children are much more relaxed since they no longer see their grandparents," one parent said. Many children have confirmed however, that their parents feel this way because parents are more relaxed being away from grandparents and ascribe this feeling to their children. The children, saying nothing, hide their feelings to spare their parents the pain of seeing how unhappy the child is.

The turmoil engendered by divorcing grandparents from their grandchildren exacts a heavy emotional toll on parents. "It's like an obsession with me," one father said, "to get these people (grandparents) out of my life. They are all I think about. I never want to see them again. The kids will have to go along and I will go to any length to do it." This father, an architect, sees his ex-father-in-law at professional meetings. "I'll even change professions and move away if that will keep Raoul (grandfather) out of my life. He doesn't let up. Now he wants to go to court."

When grandparents go to court, parents suffer. Backed into a corner they often become irrationally angry and emotionally overwrought. "I haven't slept since this all started," a father said. "But I have to go all the way, even if it kills me."



For some parents, especially ex-in-laws, getting rid of grandparents is a matter of convenience. "Look at my position," said the young father of two children whose wife died two years ago. "I'm getting married to a great gal and I'm crazy about her parents. I want to start a new family. I don't want to have to be bothered with my ex-in-laws coming around and visiting and arranging things. Time is important. I don't want them intruding into my life. They are nosy people. I don't dislike them, but I was never crazy about them. They have other grandchildren and they will get over it." He summed it all up: "I'm trying to make my life simple."

Parents who cut themselves off from their own parents and take their grandchildren with them deprive themselves of the opportunity to resolve their attachments to their parents which is critical for their own emotional health and is a basic part of the human growth process. Just as the runaway child finds that running away from problems doesn't help at all, parents learn that "disowning" one's family solves nothing. One mother said it well: "What I'm most worried about is that the children are watching what I am doing. What am I teaching them about parents and children? What have they learned about how to solve their problems with me?"

#### When Litigation Occurs

None of the people that we interviewed who went to court felt that their cause was well served. Indeed all of them felt that litigation exacerbated the "bad feelings" between all of the concerned parties. "Everyone lost" one young parent said.

These cases pose great difficulty to the court. When the court bars grandparent visitation it does so "in the best interest of the child." In truth, such a judgement is usually in the best interest of the parent.

The court is ill equipped to handle these cases. There are few experts to advise the court concerning the necessity of grandparent/grandchild relationships. So-called experts, who are available to the court, are inexperienced in matters concerning the relationship between grandparents and grandchildren. Indeed, these experts are products of their own culture, an ageist one, which impairs their objectivity. Without experts, and in it's

eagerness to dispense with the agonizing spectacle of a family tearing one another apart, the court too easily "permanently" bars grandparent visitation - thus "fixing" the family's situation in this deplorable state.

Although it is incomprehensible that a court would support a divorce between parents and grandparents and between grandparents and their grandchildren-it happens. And it happens easily even though the court does not have enough knowledge of the complexities of the issue to make such a judgement. The case in which this is done is a direct reflection of the anti-family bias of our society.

This divorce reinforces family differences and creates wounds that never heal. The child is put in the position of choosing between the most important people in his life. It is an impossible choice for a child.

#### Prevention and Treatment of Unwilling Grandparent-Grandchild Divorce Role of the Therapist

Up until now, in our ageist society, grandparents lost visitation rights with their grandchildren because 1) their importance to children was essentially unknown; 2) our society has no role for the aged and worships youth, physical beauty and socio-economic and political power and 3) ignores the importance of the family in general and especially the three generational family and 4) ignores the role of emotional attachments in human happiness.

Indeed, the great majority of grandparents that<sup>1</sup> interviewed<sup>5</sup> IN OUR NATIONAL STUDY were less keen on being grandparents than pursuing their own narcissistic self-interests.

The nature of the grandparent-grandchild relationship has been largely ignored by the mental health professions. Early investigation of the relationship by Weinstein and Neygarten<sup>2</sup>, Kahana and Kahana<sup>3</sup>, and Robertson and Wood<sup>4</sup> all recommended further inquiry into the relationship. Little is to be found in the psychoanalytic literature concerning grandparents. Although outstanding family therapists (Bowen, Whittaker, Minuchin et.al.) often involve grandparents in therapy there is little written<sup>6</sup> about the "therapeutic" use of grandparents.

Recent research<sup>5</sup>, however has established the indispensable nature of the grandparent-grandchild bond. Several points are especially important as it pertains to the unwilling divorce of grandparents from their grandchildren. Kornhaber has shown that 1) The emotional bond between grandparents

and grandchildren is second only in importance to the bond between parents and children, and that 2) many problems passed on from grandparent to parent are not DIRECTLY passed on from grandparent to grandchild (nature gives grandparents a second chance) and 3) that grandparents affect the lives of their grandchildren, for better or worse, just because they EXIST.

The grandparent-grandchild relationship is genetically rooted in the thousands of years that people have been raised by their kin. It is verifiable psychologically and experienced as feelings through emotional attachments.

Thus it is the natural right of the child to have access to its grandparents. It is not a right granted to them by the parent generation. Grandparents and grandchildren should never be deprived of one another. It is the child's right to work out its relationship with its grandparent without interference by the middle generation (except under exceptional circumstances).

The role of the therapist in facilitating this relationship, and in protecting its sanctity is clear. In individual therapy, the therapist can affirm the importance of the

relationship by exploring his patient's experience as a grandchild. Therapists who work with older patients will help the patient by alerting him to the importance of his own role as a grandparent. Family therapists should include grandparents as an integral part of the family treatment. Grandparents are most useful in Child Psychiatry, not only as participants in the therapeutic process but in the special roles that they play for the child and the family.<sup>5</sup>

Therapists can help in the prevention of unwilling grandparent-grandchild divorce by being alert to families who are vulnerable to the disruption of generational continuity. Deep seated animosities between parent and grandparents must be dealt with quickly and effectively before the grandchildren are infected by the animosity of their elders making their parents negative perceptions their own because they have no direct, thus different, experience with their grandparents. Children who have no direct relationship with their own grandparents adopt the perceptions and attitudes of their parents.<sup>5</sup>

It is important to counsel all patients to avoid litigation at all costs. Litigation perpetuates the pathological system, ignores the common bonds of the family, and does not allow natural healing to take place.

If litigation is unavoidable the therapist should take an active role in educating the (often ignorant) court of the importance of the grandparent-grandchild

relationship and espouse the maintenance of the relationship, under the supervision of the therapist if necessary.

We advise that Family Court Judge's remand the family to the care of a court appointed therapist who will maintain visitation at the same time that the family works through their problems. The continuation of visitation, even during an "emotionally hot" period spares the children the pain of separation from their grandparents while offering them an admirable example of how all of the adults who care for them settle their own differences in a rational and principled manner.

The therapist who takes a stand against the disruption of the three-generational family also spares the adults from disowning one another- which is a terrible emotional burden to bear. Parents are spared from "divorcing" themselves from their own parents and from the enmity of their own children who know well that they have divorced them from their grandparents. Finally, the therapist offers grandparents a chance to fulfill their role as grand-parents and not least- offers them another chance to be better parents.

Mental Health Professionals can make a significant contribution to limiting three-generational divorce by educating themselves and the public about the importance of the grandparent-grandchild relationship and acting to preserve the integrity of the three generational family in their professional endeavors.

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[From Readers' Digest, February 1983]



When their children's marriages dissolve, many Americans are shocked to discover that they have been cut off from their grandchildren. But it doesn't *have* to end that way

## Grandparents: The Other Victims of Divorce

By ARTHUR KORNHABER, M.D.

ANN AND LOU DRAPER\* had been looking forward to becoming grandparents for a long time. So when their son announced that his wife was pregnant, they were overjoyed. Eight months later a grandson was born; two years after that a granddaughter. The Drapers lavished time, affection, wisdom and gifts on their grandchildren. When Lou died, Ann focused even more of herself on them: she baby-sat and took them for weekends. When her son told her that he and his wife were going to get a divorce, he said, "Don't worry, you'll still be able to see the kids."

At first, Ann saw her grandchil-

\*The examples in this article represent actual cases. Only the names have been changed.

dren regularly. But when the daughter-in-law remarried and, with the children, moved to a distant city, she explained that the children now had "a new set of grandparents" and it would be "in everyone's best interest" if Ann didn't see them anymore.

In less than three years, Ann had suffered the death of her husband and the de facto loss of her grandchildren. Her son, taking up the threads of his own life, refused to intercede. As a result, Ann's health deteriorated. Finally, she entered a nursing home.

With an estimated 50 percent of American marriages now ending in divorce, this is no longer an unusual situation. At a time of life when both grandparents and grandchil-



## GRANDPARENTS: THE OTHER VICTIMS OF DIVORCE

dren can benefit most from a close relationship, many are being effectively "divorced" from one another.

As a psychiatrist dealing with troubled families, I've seen the results of unwilling severance of the natural connection between grandparents and grandchildren and the emotional pain it can cause for *both* generations. Fortunately, there are things that can be done to avoid or reverse the situation. For example:

- *Understand the relationships in your family.* Unwilling grandparent-grandchild separation occurs most often when divorce strikes families in which there has been friction between parents and grandparents. One way of reducing this friction is to examine how a successful family operates—and then compare your own with it.

The Aldos live within an hour's drive from their daughter Maria, son-in-law Sonny and four grandchildren. They visit on Sundays (or invite the family for dinner) and drop in occasionally during the week. When Maria and Sonny go away, Granny and Poppa Aldo move in with the kids. In effect, the roles of the adults are interchangeable. Yet—and this is a key point—there is no competition between parents and grandparents, and the latter make no attempt to impose their will on the family's affairs.

A family that operates this well can absorb the normal problems of

life. And when things aren't running smoothly, the members tend to come together rather than fly apart.

Now consider your own family. Chances are there are some disagreements between parents and grandparents. Airing and correcting them can help strengthen your relationship and also help avoid grandparent-grandchild problems, even if divorce should occur.

One issue that may become apparent is role reversal and control. A number of grandparents serve as surrogate parents to their grandchildren during the early years of their children's marriages. Consider the case of Lisa and Ralph, who married while both were in college. For financial reasons, they lived with Lisa's parents, and when the two children came along, the elder Johnsons took care of them. Even after Lisa and Ralph moved out, the grandparents played a major caretaking role while the mother and father worked.

After seven years, Lisa and Ralph divorced. Lisa "gave" the children to her parents, and headed West in search of a new life.

Meanwhile, Ralph remarried and, with his new wife and her two children, settled in a neighboring town. Soon after, he told the Johnsons that he wanted his children to move in with him. With Lisa showing no interest, the grandparents decided it was the best solution, and Ralph and his new wife didn't object when they showed up three

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DR. ARTHUR KORNHABER is a pediatric psychiatrist and co-author of *Grandparents/Grandchildren: The Vital Connection*.

## GRANDPARENTS: THE OTHER VICTIMS OF DIVORCE

times a week for visits and dinner out with their grandchildren.

As time went on, though, Ralph began to complain about the Johnsons' "taking over" the children, saying they were undermining the stepmother's authority and dividing the family. Eventually, he asked them not to visit anymore.

Because the grandparents had assumed the role of mother and father during the grandchildren's early years, they were unable or unwilling to give it up when Ralph remarried. Consequently, the Johnsons lost the opportunity to watch their grandchildren grow; and the grandchildren were denied the experience of knowing, loving and learning from their grandparents.

But even if grandparents have not served as surrogate parents, competition for authority still occurs in many families. Since grandparents are experienced in raising children, it's difficult for many of them to assume a supportive role. Instead, they plunge into the role of child-caring, not letting the parents learn for themselves. Many new parents describe their own parents as controlling, intrusive or showing a lack of confidence. Thus, they often seek ways of cutting the grandparents out of the picture.

Acknowledging such problems, and finding ways to turn grandparents from "authoritarian" into "supportive" figures, can improve family relations. But sometimes professional help may be needed.

• *Grandparents can take advantage of their legal rights.* Until about 15 years ago, grandparents separated from their grandchildren had virtually no legal way to change the situation. They were dependent on the "good will" of their children or children-in-law.

"Today things are getting better," says Leland S. Englehardt, a Connecticut attorney who specializes in family law. "In Connecticut, we now have a law that requires the court to consider the rights of grandparents who want visitation with their grandchildren." In Virginia, courts may provide the grandparents visitation rights in parents' divorce decrees. Ohio law allows judges to grant "reasonable visitation rights" to any person who has a legitimate interest in the child's welfare.\*

But legal action should be a tactic of last resort. Most judges aren't trained in the psychological complexities of the grandparent-grandchild issue, and they often make their decisions while ignoring the importance of this relationship.

Fortunately, in recent years, courts in states such as New York, Massachusetts, Michigan and California have used social workers, psychologists, psychiatrists and other professionals to help counsel the disputing parties so that visitation schedules may be worked out in the best interest of the child. By help-

\*For further information, write to Grandparents-Children's Rights, 5728 Bayonne Ave., Haslett, Mich. 48840.

# GRANDPARENTS: THE OTHER VICTIMS OF DIVORCE

ing the family address its difficulties, the counselor keeps the grandparent-grandchild relationship intact. This not only minimizes friction, but provides grandchildren an admirable example of how people can settle differences in a rational manner.

- *Make the most of the grandparent-grandchild visitations.* If there is a divorce in the family, here are five rules for grandparents to follow to maintain a close relationship with their grandchildren:

1. Realize the importance of time spent together. Don't slough it off as "just another Sunday afternoon with the grandchildren." Treat them as if they are a precious package entrusted to you for only a short time. *Listen to them.*

2. Try to attend family milestones. Holidays, birthdays and graduations have special significance to children. The youngsters will talk about them for a long time; and your being there will become part of their lives.

3. If distance is a problem, send them photographs and tokens of your love. One of my patients, a ten-year-old girl, never fails to show me the latest photos of her grandparents—even though she

has a new set of step-grandparents.

4. Call in between visits and write letters. Mail is something children can save and show to friends. And they will be able to form mental pictures of you and your life.

5. Keep them up-to-date on the comings and goings of other relatives. You can serve as a vital link, not only helping to keep the extended family together but endearing yourselves to the youngsters at the same time.

GRANDPARENTS who take the time and energy to maintain contact with their grandchildren are heroic figures. By demonstrating love and dedication, they give their grandchildren the special knowledge and experience of belonging to a family—a critical factor in the development of children's emotional health and social growth. Separation of grandparents and grandchildren due to divorce is a terribly sad and all too common side effect of what is happening in many families today. But it doesn't have to be.

✂ For information on reprints of this article, see page 214 ✂



## Gab Fest

JOURNALIST FRANKLIN P. ADAMS once listened patiently as a friend told a story that never seemed to end. At length, the fellow drew near the finish. "Well," said the friend, "to make a long story short—"

"Too late!" Adams cried.

—Howard Teichmann, *George S. Kaufman* (Atheneum)



Senator EAST. If we could turn now to Lee and Lucille Sumpter of Grandparents'-Children's Rights, Inc., of Haslett, Mich.—we welcome the two of you.

Thank you. It's a pleasure to have you both here this morning.

#### STATEMENT OF LEE AND LUCILLE SUMPTER

Mr. SUMPTER. Thank you, Senator East, grandparents are and always have been a vital link in our society. They are the unwritten history of our families, towns, States, and Nation. They are the unrecognized therapy our children need. They are the safety valves for the troubled families, and the cheering section for everybody's progress. Grandma and Grandpa are the repository for tall tales, good advice, and dubious guidance depending on who asks for what and under what circumstances.

Our very limited experience with grandparenting has shown us that grandparents are very disturbed if they do not or cannot function in their rightful role as such. I stress rightful simply because we firmly believe grandparenting is a right and not a privilege. The judiciary in our country does not have a very good concept, if any, of grandparents' rights. Reading case histories of grandparent visitation court actions, using information in many letters, and conversing with many grandparents clearly says we have no rights.

How much of this heartbreaking dilemma that has been created is our fault? We choose to believe that the vast majority of the grandparents have been unjustly denied the right to visit their grandchildren. Dr. Arthur Kornhaber, coauthor of "Grandparents-Grandchildren, the Vital Connection," has evidence that some grandparents do not care to see their grandchildren, and this is very difficult for us to understand. We do admit that there are grandparents who should not associate with their grandchildren because they do upset the equilibrium of families and they create senseless problems. Time, distance, and economics play a big part in restricting frequent visitation. We can accept these reasons for lack of visiting.

We must establish a basis for our visitation problems. A child is brought into the world, and normally both parents share their love with it. Because of death, divorce or separation, one parent is gone. The remaining parent takes the child to live in the home of the maternal or paternal grandparents where they remain for months or several years. Because the parent may be away during most of the child's waking hours, the child will develop a secure and loving relationship with its grandparents who care for it. They become the psychological parents, and their home the child's home. Later the parent will take the child to live with a stepparent or a live-in girl or boy friend. The stepparent or live-in will decide that the child is not to visit the grandparents anymore. Why, you ask? We do not know. They do not know. They will not tell you. We believe that they are jealous of the love the child has for the grandparents. The parents are insecure and immature. In many cases they are self-centered, egotistical, selfish, and mentally ill. They have no deep love for the child, and do not care that it is being deprived of a loving relationship with its grandparents. It is a form of child

abuse not readily discernible. These parents have no concept of the children's feelings or rights.

We have developed several categories of grandparents who are being denied visitation with their grandchildren. Circumstances are created which lead to denial based on divorce, death of one parent, a custody battle with one parent denying one or both sets of grandparents, live-in partners, cult membership; and finally the sons and daughters of the grandparents denying their own parents access to their children. Denial of visitation because of a step-parent adoption is the most vicious. Grandparents are being told that the children have too many grandparents. These children are the blood relatives of the grandparents.

There are three stages grandparents involuntarily experience when told the glorious news "you can't see them anymore." You are shocked, really can't believe what you are hearing. Especially if you have had a loving relationship with the child for x number of months or years. Next, self-pity sets in, or what did I do to my children to make them treat me this way? After you realize that you did not do anything, you get angry. This anger becomes a permanent state of mind. It will not go away, and it is not a hate thing, but a seething frustration. Every time another confrontation occurs that incident merely fuels the anger.

We have a very difficult time finding grandparents with a visitation problem. Many are reluctant to speak about it because it is a family problem, and they are ashamed of it. Many do not consider that anybody else could have the problem. And, third, if they are having any contact with the children at all, they are afraid that if they make waves they will be cut off completely. We have been told these reasons by many grandparents across our Nation. Grandparents cannot go public, cannot go to court, and in the process go through considerable humiliation at the hands of their children. These parents grew up in the sixties and seventies. They want it all their way, want it now, and finally realize that adulthood is too much for them. They run the full range of mental disorders from chronic manic depressives, to schizophrenics, to paranoids, and ego maniacal selfish immature people.

The grandparent visitation problem is a national disgrace. Forty-seven States have laws in varying degrees allowing grandparents to petition for visitation. We have copies of all 47 State laws and are constantly updating them. In the past 5 years, 25 States have passed legislation in some form. Dr. Kornhaber recommends mediation on a mandatory basis of 18 to 24 months duration. We know this is the best solution. The courts do not have the expertise to handle family matters. Divorce, yes, for the adults. But who thinks or cares about the children? The mediation recommended must be required and administered by law. Grandparents are ignored by the judiciary. Parents lose their children, and grandparents are not allowed to adopt, have custody, or even visit in foster homes. The worst circumstance is denial of association after adoption. Children that are being emotionally, mentally, physically, and sexually abused are usually being denied the right to see their grandparents. Children as young as 4 or 5 years old try to run away to the homes of their grandparents for safety.



The State laws dealing with visitation are widely divergent. Some allow for visitation based on the death of a parent, a custody case, or in a divorce proceeding. One State law allows grandparents a voice in the adoption process. Delaware's law is very brief and it covers the entire problem. We must allow for any grandparent to petition a court for visitation without any qualifying conditions.

Grandparents'-Children's Rights, Inc., is actively assisting involved grandparents in each State to seek adequate laws to protect the visitation rights of grandchildren and grandparents, and to organize active contact groups in each State to work for a national children's rights law. We have a national mailing list of about 1,000 grandparents with the problem. We have answered over 3,500 letters about this problem since January of this year. We are averaging five letters a day still which indicates a continuing problem.

One major area of deep concern is the nonreciprocity of court orders in the matter of family law. Grandparents get visitation in one State's court, the parents move to void this action to another State. It should not be necessary for grandparents to chase their grandchildren all over the United States through courts to visit them.

The grandparents here today and all over America sincerely appreciate your concern and the opportunity to appear before you.

[The following was received for the record:]

#### PREPARED STATEMENT OF LEE AND LUCILLE SUMPTER

Mr. Chairman and honorable committee members, we thank you for allowing us to speak before your committee hearing today.

Grandparents'-Children's Rights, Inc. was incorporated on July 8, 1981, by us and a grandmother who is an advocate for the rights of children. It is a non-profit, non-tax exempt Michigan corporation. There are no rules or dues. We pay for all that we do from our retired incomes, and we plan to work for the rights of children and their grandparents until we are too old or when we run out of money.

The goals of our organization are to help grandparents to organize independent contact groups in each State so that they will be able to meet to discuss their problems, to exchange information and to work together to lobby for adequate uniform grandparent visitation laws that will allow: "Any grandparents to have the right to petition a court to request reasonable visitation with their grandchildren, and that the adoption by a step-parent or a blood relative will not terminate the visitation rights of paternal or maternal grandparents." A mediation panel consisting of at least three professionals from the social sciences should assist in deciding what is best for the child.

There are nine States that have independent organizations that meet regularly. Twenty-seven States have contact leaders that are available to relay information through newsletters.

We serve as a clearing house to collect and to pass on information to anyone who has an interest in the grandparent visitation problems, and we will travel to any State to meet with grandparent groups. Hawaii and Alaska are excluded until a larger number of grandparents contact us from those States.

This year we have met with grandparents in the States of Washington, Texas, Nebraska, Iowa, Missouri, Kentucky, Ohio, Vermont, New Hampshire and Wisconsin.

Because of the broad media coverage of the December 16, 1982, hearing that Congressman Mario Biaggi held in Washington, D.C., a "Donahue" program that was shown in January, and an article written by Dr. Arthur Kornhaber that appeared in the February issue of the "Readers Digest," we have received over 3,500 pieces of mail plus many telephone calls requesting information from all of the fifty States and Washington, D.C. Mail and telephone requests have also been received from Alberta, British Columbia, Ontario and Saskatchewan, Canada, and from Austria, Great Britain, Puerto Rico and Venezuela.

We have appeared on two "Donahue" programs, on the "CBS Evening News" and on television and radio programs in Michigan, Washington, Nebraska, Kentucky

and Vermont. Many newspaper reporters and free lance writers have interviewed us in person or by telephone.

Almost one thousand people have requested to be placed on our mailing list. Not only grandparents have written to us. Many young parents have written to ask how they can prevent their parents from being denied the right to see their children if something should happen to them. Children in elementary grades, who are forced to live with step-parents who abuse them, have written that they want to live with their grandparents.

Ministers, family doctors, lawyers, legislators, social workers, psychiatrists, sociologists, psychologists and teachers have written expressing their concerns about this growing social problem.

In 1978, there were twenty-two States that had some form of a law to protect the visitation rights of grandparents. Today there are forty-seven States that have visitation laws ranging from good to very limited. Nineteen States are in the process of amending their present laws. Nebraska, Vermont and Wyoming plan to introduce visitation bills in 1984.

A National Code is vital to assure grandparents reciprocity in the court system. The parents of our grandchildren inform us that if we make "waves", they will move to another State. (Our grandson was moved to Virginia, and now he lives in Vermont where there is no visitation law). Too many grandparents do not have the economical means to travel and to pursue court action in any state except their own.

It is estimated there are at least ten more denied grandparents who have not written to us for every one that has. They are afraid to talk to others about their problems because of shame, fear of not realizing that someone might be able to help them. Talking with others who share a similar problem helps to relieve the terrible pain that they bear in silence. It is easier to accept death of a loved one than it is to cope with not being able to see a grandchild that you love dearly, and to know that he loves you and wants to see or hear from you as badly.

A fundamental precept that must be considered is that the children of this country do not belong to any political party, and their rights must be raised from the political arena to a humane level for the preservation of our society.

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#### GRANDPARENTS—CHILDREN'S RIGHTS INC., HASLETT, MICH., AUGUST 1983

This compilation indicates the categories that grandparents may petition their state courts for visitation rights otherwise denied them by members of their immediate family or others:

##### 1. Reasonable visitation rights of any maternal or paternal grandparents—

Connecticut*	Idaho
Delaware	North Dakota*

##### 2. The court has jurisdiction to grant visitation rights to grandparents or anyone else when it deems such rights appropriate—

Hawaii	South Carolina*
Nevada*	Virginia
Ohio	Washington

##### 3. Visitation rights of grandparents involved with death, divorce, or custody—

Alabama	Mississippi*
Alaska	Missouri*
Arizona*	Montana*
Arkansas*	New Hampshire
California*	New Jersey*
Colorado	New Mexico
Florida	North Carolina*
Georgia	Oklahoma*
Illinois	Oregon
Iowa	Pennsylvania
Indiana*	Rhode Island
Kansas	South Dakota
Kentucky	Tennessee*
Louisiana	Texas
Maine*	Utah
Maryland	West Virginia*
Massachusetts	Wisconsin
Michigan	New York*
Minnesota*	

## 4. No laws—

Nebraska  
VermontWyoming  
Washington, D.C.

\* States that have pending legislation to improve their laws.

Write to: \_\_\_\_\_ for a copy of the \_\_\_\_\_ law concerning visitation rights  
[Revised copy. All others obsolete.]

[From the Kingsport, (Tenn.) Times News, July 29, 1981]

## BABY BOOM CASUALTIES

(By Al Rossiter)

The children of the post-war baby boom have come of age and health authorities report the increase in young adults in the United States is accompanied by a new generation of severely mentally ill young people.

This new generation of mentally ill has been described as a rootless, unemployed class who use alcohol and other drugs heavily and who strongly resist help.

Many of them have never seen the inside of a mental hospital and are more likely to call themselves social casualties than victims of mental illnesses or personality disorders, according to Dr. Bert Pepper, director of the Rockland County (N.Y.) Community Mental Health Center.

He said these patients in their 20s and 30s have a variety of diagnoses but share many of the same problems—their vulnerability to stress, their difficulty in making stable relationships, their inability to get and keep something good in their lives and their repeated failures of judgment.

"Most have been able to make only transient, unstable, unsatisfactory relationship with people their own age," Pepper wrote in the current issue of *Hospital & Community Psychiatry*. "Their friends and lovers are often other marginally functional people with equally uneven life courses and dubious prognosis."

Pepper, who also is professor of psychiatry at New York University School of Medicine, said since many of these mentally ill young people do not view themselves as patients, they are reluctant to acknowledge a need for treatment.

He said they are just as likely to blame mental health professionals for their problems as they are to turn to them for help.

Pepper said a review of 900 patients seen in a three-month period last year at the Rockland County center indicated that 294 were members of a group called chronic young adult patients. Fifty-seven percent were diagnosed as schizophrenic and 7 percent were manic depressive. The others had personality or behavior disorders, neuroses, drug or alcohol dependence and other disorders.

"We estimate that for every dysfunctional young adult we see, there are two to 10 in the community who never arrive at our doorstep but are hidden in dysfunctional families or in jails, or wander unnoticed on city streets," Pepper said.

Of those who are seen in mental health centers, he said few show marked improvement.

"Instead they become, individual and collectively, our albatross. They are functioning persons only in the marginal sense. They manage their lives tenuously at best and disastrously at worst."

Comment.—Many of the parents who deny visitation rights to the grandparents of their children belong to "This new generation."

Senator EAST. Thank you, Mr. Sumpter, for an excellent statement, and again I thank you for conforming to our time constraints.

I would like to turn now, please, to Mrs. Roberta Teverbaugh from Richland, Wash.

Mrs. Teverbaugh, we are delighted to have you with us here this morning, and if you would proceed, please.

## STATEMENT OF ROBERTA TEVERBAUGH

Mrs. TEVERBAUGH. Thank you very much. I am happy to be here today.



Senator East, I wish to commend the committee individually for the insight and compassion shown in recognizing the importance of the family in our society, and for the opportunity to air this national problem of the severance of grandchildren from grandparents, so that together we may strive toward a solution.

I also wish to publicly thank Lee and Lucille Sumpter who have become my close personal friends for their dedication to the grandparent visitation movement for which they have been so instrumental. Their guiding light of strength and assurance has been irreplaceable. My deepfelt gratitude is extended to them.

My request for grandparent visitation has been my first experience with the court system of our State of Washington, and I have been personal witness to the glaring deficiencies and inadequacies of both our laws and the court system of our State. I have found unethical counsel can be retained; I have found bias and opinionation; I have discovered that a court ruling can be defied; I have discovered that "in the best interests of the child" can be bent like a willow in the wind; I have discovered that individuals instrumental in our court system in the State of Washington are literally groping in the dark as to interpretation of procedure regarding grandparent visitation; and I have discovered, most importantly, the detrimental harm done to children as the end result.

I had always believed that when a problem existed, there was a system of justice in the laws of our land. I now question that conviction.

With others we may sympathize from afar, but when the same problem eats away like a cancer at the very heart of our own family, we question, we are appalled, we become angry, and we get involved.

In the interests of brevity, I wish to take the time before you this morning to point out the facts of our own personal case for the last nearly 3 years in the State of Washington, confirmed from the official court document pages which have led to my conclusions.

Fact No. 1, the inadequacy of the grandparent visitation law. In our State of Washington the statute reads "Any person may petition the court for visitation with a child if such visitation is in the best interests of that child." The judgment in our case came down, and I quote: "Now, it seems to the court that the statute itself might be broad enough to cover grandparents in a proper situation. 26.90.240 does use the word 'person,' 'any person.' The case law is not as definitive as it might be."

Our request for grandparent visitation was denied.

Fact No. 2, the illegal adoption of our grandson. Our grandson was adopted by his second stepfather without the approval of the natural father, our son. After a 2-day trial, the ruling of the court was this: one, parental rights were restored to the natural father because the court felt that there had been a design on the part of the custodial parent, the mother, to cut the father off from his paternity; and, two, that there was a deliberate attempt on her part, through counsel or otherwise, to assure the father did not know about the adoption proceeding before the court. It was devious.

Fact No. 3, the detrimental harm to children. When our son and all the multiple extension of our large family were allowed to see our grandson, he was a well-adjusted, happy, extroverted, sensitive,

and loving little boy. Nearly 3 years later, at the tender age of 7, he has learned to hate; he has very firmly and very verbally called his father rotten, has added "My family is very upset with what you are doing, plus somebody else is bugging my family, and I think you know who they are." And he has concluded with: "I want you just to leave me alone."

We have had to stand by helplessly watching a small boy, who was once very demonstrative of his love for all of us, take on a rebellious, angry, and hostile personality.

Child abuse of this nature is a learned tool brought about by the animosity and bitterness of adults through a constant negative atmosphere.

As grandparents, we do not wish to undermine the rights of the natural parents to make decisions of importance in the lives of their young children. We want only to share a portion of their time and their hearts. We all, young and old alike, have a basic need to love and be loved, to care and to share, to be comforted and to comfort, to understand and to be understood, to listen and to speak out, to belong and to grow in the security and strength of family.

Is this really too much to ask?

Fact No. 4, the need for national legislation. Individual States should solve the problems of citizens within their boundaries, but the fact is clear: States are hesitant to even address the issue, much less strive for a solution. There exists a vital need for the Federal Government to be a liaison of assistance. The price tag is not high. The criterion simply one of compassion and understanding. Laws do not even exist in several States in our country for the protection of the vital grandparent-grandchild bond. Where laws do exist, they have proven to be inadequate and deficient.

With the accelerating rate of divorce in our country at the present time, the problem will not improve; it will only compound.

How can we expect countries to solve problems of a vast scope when we choose as a nation to allow the continuing dissolution of the stronghold of our great nation, the family. The severance of family lies in wait in every household of our country, and we are all potential victims. Think about it.

Thank you.

[The following was received for the record:]



## PREPARED STATEMENT OF ROBERTA TEVERBAUGH

## SUMMARY

Senator East and members of the Committee:

I wish to commend the committee individually for the insight and compassion shown in recognizing the importance of the family in our society and for the opportunity to air the national problem of the severance of grandchildren from grandparents so that together we might strive toward a solution. I also wish to publicly thank Lee and Lucile Sumpter, who have become my close personal friends, for their dedication to the grandparent visitation movement for which they have been so instrumental. Their guiding light of strength and assurance has been irreplaceable. My deepfelt gratitude is extended to them.

My request for grandparent visitation has been my first experience with the court system of our State of Washington and I have been personal witness to the glaring deficiencies and inadequacies of both our laws and the court system of our state. I have found unethical counsel can be retained; I have found bias and opinionation; I have discovered that a court ruling can be defied; I have discovered that "in the best interests of the child" can be bent like a willow in the wind; I have discovered that individuals instrumental in our court system in the State of Washington are literally "groping in the dark" as to interpretation of procedure regarding grandparent visitation; and I have discovered most importantly the detrimental harm done to children as the end result. I had always believed that, when a problem existed, there was a system of justice in the laws of our land. I now question that conviction. With others we may sympathize from afar, but when the same problems arise away like a cancer at the very heart of our own family, we question, we are appalled, we become angry, and we get involved!

In the interests of brevity I wish to take the time before you this morning to point out the facts of our own personal case for the last nearly three years in the State of Washington, which I have confirmed from the official court document files, which have led to my conclusions:

FACT NO. 1: THE INADEQUACY OF THE GRANDPARENT VISITATION LAW

In our State of Washington the statute reads: "any person may petition the court for visitation with a child if such visitation is in the best interests of that child." The judgement in our case came down, and I quote: "Now, it seems to the Court that the statute itself MIGHT be broad enough to cover grandparents in a proper situation. 26.90.240 does use the word person, any person. The case law is not definitive as to what it might be." Our request for grandparent visitation was denied.

FACT NO. 2: THE ILLEGAL ADOPTION OF OUR GRANDSON

Our grandson was adopted by his second stepfather without the approval of the natural father, our son. After a two-day trial the ruling of the court was this: 1) parental rights were restored to the natural father because the court felt there had been a design on the part of the custodial parent, the mother, to cut the father off from his paternity; 2) that there was a deliberate attempt on her part, through counsel or otherwise, to assure the father did not know about the adoption proceeding before the court - it was devious.

FACT NO. 3: THE DETRIMENTAL HARM TO CHILDREN

When our son and all the multiple extension of our large family were allowed to see our grandson he was a well-adjusted, happy, extroverted, sensitive and loving little boy. Nearly three years later, at the tender age of seven, he has learned to hate. He has very firmly and very verbally called his father "rotten", has added "my family is very upset with what you are doing", plus "somebody else is bugging my family and I think you know who they are", and concluded with "I want you to just leave me alone." We have had to stand by helplessly watching a small boy, who was once very demonstrative of his love for all of us, take on a rebellious, angry and hostile personality. Child abuse of this nature is a learned tool brought about by the animosity and bitterness of adults through a constant negative atmosphere. As grandparents we do not wish to undermine the rights of the natural parents to make decisions of importance in the lives of their young children. We want only to share a portion of their time and their hearts. We all, young

and old alike, have a basic need to love and be loved....to care and to share... to be comforted and to comfort....to understand and be understood....to listen and to speak out....to belong and to grow in the security and strength of family. Is this too much to ask?

#### FACT NO. 4: THE NEED FOR NATIONAL LEGISLATION

Individual states should solve the problems of citizens within their boundaries but the fact is clear states are hesitant to even address the issue, much less strive for a solution. There exists a vital need for the federal government to be a liaison of assistance. The price tag is not high; the criteria simply one of compassion and understanding. Laws do not even exist in eight of the states in our country for the protection of the vital grandparent/grandchild bond. Where laws do exist they have proven to be inadequate and deficient. With the excelling rate of divorce in our country at the present time the problem will not improve - it will only compound. How can we expect countries to solve problems of a vast scope when we choose as a nation to allow the continuing dissolution of the stronghold of our great nation - the family? The severance of family lies in wait in every household of our country and we are all potential victims. Think about it.

#### STATEMENT

My request for grandparent visitation has been my first experience with the court system of our State of Washington and I have been personal witness to glaring deficiencies and inadequacies of both our laws and the court system of our state. I have found unethical counsel can be retained; I have found bias and opinionation; I have discovered that a court ruling can be defied; I have discovered that "in the best interests of the child" can be bent like a willow in the wind; I have discovered that individuals instrumental in our court system in the State of Washington are literally "groping in the dark" as to interpretation of procedure regarding grandparent visitation; and I have discovered most importantly the detrimental harm done to children as the end result. I had always believed that, when a problem existed, there was a system of justice in the laws of our land. I now question that conviction. With others we may sympathize from afar, but when the same problem eats away like a cancer at the very heart of our own family, we question, we are appalled, we become angry, and we get involved!

I wish to take the time before you this morning to point out the facts of our own personal case for the last nearly three years in the State of Washington, which I have confirmed from the official court document pages, which have led to my conclusions:

#### FACT NO. 1: THE INADEQUACY OF THE GRANDPARENT VISITATION LAW

In our State of Washington the statute reads: "any person may petition the court for visitation with a child if such visitation is in the best interest of that child." The word any is described in Webster's dictionary as meaning one, or some, or no matter which, or every. Yet the judgement in our case came down, and I quote: "Now, it seems to the Court that the statute itself MIGHT be broad enough to cover grandparents in a proper situation. 26.90.240 does use the word person, any person. The case law is not as definitive as it might be." Isn't a grandfather a person? Isn't a grandmother a person? Aren't grandparents collectively people? One would think so, but the interpretation of the law in our state does not reflect that well-known theory. Attorneys have told grandparents in the State of Washington that the "teeth" have been taken out of the grandparent visitation law by one case which was denied at the Supreme Court level. Does this now mean that deserving grandparents throughout our state will henceforth be denied the opportunity for a hearing? One might think so.

In our initial request to an attorney for grandparent visitation the following answer was received: "I researched your question. Without a showing of abuse or neglect, grandparents do not have visitation or custodial rights to children. Sorry." Even with an existing law grandparents of our state are being put in the position of need to prove the existence of a negative family situation in the lives of their grandchildren to be able to share in their lives rather than the opportunity to promote a positive strive toward family unity.

I spoke at length with Ruth Robinson who was instrumental in the passage of our existing state law in a special session of the legislature in 1977. The advice of

her attorney at that time was to utilize the words any person so that anyone who was a strong force in the life of a child - be it aunt, cousin, neighbor, friend, parent or grandparent - could petition the court for visitation. One would think the word any would cover a broad spectrum but the interpretation of the law is not such.

House Bill No. 1049, the legislation for Grandparent Visitation Rights, was introduced in our State of Washington at the 1982 legislative session. The bill was lost in the Law & Justice Committee due to more pressing legislation. During the 1983 legislative session the Grandparents Visitation Rights legislation was re-introduced as House Bill No. 86. The bill was withdrawn by the sponsor, Representative Duane L. Kaiser, for re-writing. I quote from his letter to me his reasoning behind his action: "When I agreed to sponsor HB 86 I was of the firm belief that many good grandparents were being denied the opportunity to visit and love their grandchildren and I'm still of that belief. I received so many letters with so much "hate" in them from people opposing HB 86 that I reluctantly decided to abandon those loving and deserving grandparents who would so much like to share with their grandchildren. Thus, I asked that the bill not be run during the past session." This is the type of so-called "help" we have in our State of Washington.

#### FACT NO. 2: THE ILLEGAL ADOPTION OF OUR GRANDSON

While action was pending before the court for our second hearing concerning grandparent visitation we learned through our counsel that our grandson had been adopted by his second stepfather without the approval of the natural father, our son. Immediately our son requested a hearing on the adoption before the judge who had signed his approval to the legal papers. The mother was not present at the hearing; she was represented by counsel. As my husband, son, and I sat in the chambers we felt pre-judged as to both our individual characters and our motives for the request of a hearing on the matter. Our son, who was barely allowed to speak up, was told by the judge "the only reason you are here is because your parents are pushing you into it", and "you have a long uphill battle to prove your side." The judge was right on one count. We are now over a year into that "uphill battle" and have discovered there is a stone wall at the top! At the conclusion of the hearing the judge did vacate the adoption, albeit most reluctantly. When our son asked to reinstate his visitation privileges as laid down by the divorce decree the judge remarked that he could wait "until everything was settled." We have since been in and out of court and through counseling and nothing has been settled. Our family went through a two-day trial which was two-fold: to restore the parental rights of our son and to request grandparent visitation - the two issues being "lumped together" due to an overloaded court docket. During the course of the trial our former daughter-in-law's attorney admitted under oath that the correspondence regarding an adoption hearing would never have been sent to our son until after the thirty days had passed and his parental rights had been forever relinquished. It came to light that the only reason our attorney was told of the adoption was due to the action pending before the court for grandparent visitation. Quite by accident, and most fortunately within the thirty day time frame, the truth surfaced. One would think the precious bond of parent and child would be judged in higher esteem than to fall prey to the inadequacies of the law and the unethical practices of counsel. One would think so.

The ruling of the court at the conclusion of our trial was this: 1) parental rights were restored to the natural father because the court felt there had been a design on the part of the custodial parent, the mother, to cut the father off from his paternity; 2) that there was a deliberate attempt on her part, through counsel or otherwise, to assure the father did not know about the adoption proceeding before the court - it was devious; and 3) grandparent visitation was denied because the law in the State of Washington was not as definitive as it might be.

#### FACT NO. 3: THE DETRIMENTAL HARM TO CHILDREN

The most important issue we have before us is not a partisan issue - it is a human issue - one to restore basic needs of people - and most especially the children. Biological ties are the cement of our family unit which, in turn, is the cement which holds together the very strength of our country. To deny these biological ties crumbles the very underpinnings of our society. Our story is not the unusual one, rather it is bland in comparison to others related before me. The pattern is one of the same thread of pain and void that runs through the intricate design of our lives. When our son and all the multiple extension of our large family were allowed to see our grandson he was a well-adjusted, happy, extroverted, sensitive and loving little boy. Nearly three years later, at the tender age of seven, he has learned to hate. He has very firmly and very verbally called his

father "rotten", has added "my family is very upset with what you are doing", plus "somebody else is hugging my family and I think you know who they are", and concluded with "I want you to just leave me alone." We have had to stand by helplessly watching a small boy, who was once very demonstrative of his love for all of us, take on a rebellious, angry and hostile personality. If emotional child abuse caused by a constant negative learned situation is the order of the day, our society is not strong enough to tolerate it. Our country will fall into ruin from inside it's own boundaries without a shot being fired! Our issue is not "do parents have rights?" or "do grandparents have rights?" but rather "do children have rights?" Do parents have a right to cut children off from families just because they want to cut themselves off? Is this really in the best interests of the child? I would think not. As adults we do not give children enough credit for their wisdom. They know when love offered is sincere beyond all boundaries; they know when they are being treated fairly and with kindness and compassion; they know who cares and who doesn't really care; they know who treats them as they should be treated; and they know who abuse them. The children should have the opportunity to love and be loved by people of their own choosing, not taught animosity and disapproval of a family as a carryover of adult bitterness. As grandparents we do not wish to undermine the rights of the natural parents to make decisions of importance in the lives of their young children. We want only to share a portion of their time and their hearts. We all, young and old alike, have a basic need to love and be loved...to care and to share...to be comforted and to comfort...to understand and be understood....to listen and to speak out....to belong and to grow in the security and strength of family. Is this too much to ask?

#### FACT NO. 4: THE NEED FOR NATIONAL LEGISLATION

I deeply feel the urgency to preserve the bond of family unity. Individual states should solve the problems of citizens within their boundaries but the fact is clear states are hesitant to even address the issue, much less strive for a solution. There exists a vital need for the federal government to be a liaison of assistance. As the head of a family we set down guidelines we oblige the members of that same unit to respect. They are not hindring laws - they are merely guidelines - and, when adhered to by the members, create happiness and contentment and promote lasting benefit for all. On a much greater scale, as men of high stature in the governing body of our country, you are being called upon to be the preservers of our society by strengthening the American family and millions of people could be the recipients of the blessings of your action. The price tag is not high; the criteria simply one of compassion and understanding. Laws do not even exist in eight of the states of our country for the protection of the vital grandparent/grandchild bond. Where laws do exist they have proven to be inadequate and deficient. With the exelling rate of divorce in our country at the present time the problem will not improve - it will only compound. How can we expect countries to solve problems of a vast scope when we choose as a nation to allow the continuing dissolution of the stronghold of our great nation - the family? The severance of family lies in wait in every household of our country and we are all potential victims. Think about it.

Our family has spent nearly three years of complete heartbreak and frustration working through the court system of the State of Washington to have our grandson reunited in our lives. Our son and his wife were divorced in February of 1980, and, even though our former daughter-in-law hastily remarried, we all remained an integral part of our grandson's life. Our son moved to California and the extended family remained in contact. Grandually, at the beginning, and then, as a result of a second divorce and hasty remarriage, we were suddenly completely severed. Our former daughter-in-law went into virtual hiding in our own town with what seemed like an army of people to "protect" her from the loving family we had once been in her life and the life of our grandson. As grandparents, we retained an attorney to seek visitation privileges; we were told that, even though the State of Washington has a law which allows any person to petition the court for visitation, we could do nothing unless we chose to prove child abuse or neglect. A conflict of interest led us to seek a second attorney and another request was made for visitation privileges. Before we had our second hearing in court we learned through counsel our grandson had been adopted by his second stepfather. Our son had no knowledge of an adoption request; his former wife had access through her counsel of his address and telephone number. Our son immediately returned to the State of Washington to request the adoption vacated; the judge, albeit most reluctantly, declared the adoption void. By court order our son's visitation privileges were denied until "everything was settled." Our entire family went through a court trial which was two fold: to restore our son's parental rights and to seek grandparent visitation privileges. The court ruled the adoption remain void; grandparent visitation was denied except through our son. During the trial our former



daughter-in-law's attorney, as witness in her behalf, admitted under oath the devious way in which the adoption had been granted through our court system. Counseling was ordered by the court for all parties; our former daughter-in-law and her family refused to counsel as it was intended. The court made a second ruling for counseling between our son and grandson only. At the initial session our grandson was frightened and anxious; the second counseling session was more positive. Our former daughter-in-law then suffered a miscarriage and the third session proved disastrous. Our grandson called his father "rotten", added that "my family is very upset with what you are doing", "somebody else is bugging my family and I think you know who they are", and concluded with "I want you to just leave me alone." Recommendations of the counselor have now been sent to court that no visits occur between our son and grandson for a period of one year, although correspondence and periodic phone calls are encouraged; that the last name of our grandson be legally changed to that of his psychological father to allow an identity to be established; and the adoption proceedings remain set aside in order to "keep the door open" for our son and grandson to re-establish a relationship at some time in the future free of legal entanglements when our grandson develops a desire and sufficient comfort level to be inquisitive about the meaning of "natural father." Since grandparent visitations were ruled by the court to be contingent on our son's reunion with our grandson, we have, as in the beginning, no visitation privileges. By judgement of the court we won; by the circumstances of life we all lost. At this point in time we know not whether the judge will agree with the recommendations of the counselor or set down a completely different set of rules for all to honor. After such a long and painful family effort to restore our biological ties we are, in the real sense, nowhere.

#### THE TEVERBAUGH CASE:

Our case was tried in the Superior Court, State of Washington, before the Honorable Richard G. Patrick on September 17 & 20, 1982. The question before the Court was of a two-fold nature: 1) a request to vacate an adoption previously granted by the Superior Court; and 2) a request for grandparent visitation.

Judgement on the two-fold issue was handed down by the Honorable Richard G. Patrick as follows:

#### ADOPTION:

The Court did not feel abandonment or desertion on the part of the father had been proven. The Court felt there was a design on the part of the custodial parent, the mother, to cut the father off from his paternity. The mother also wanted to cut herself from all contact with the paternal grandparents. The Court judged the manner in which the custodial parent pursued the adoption was devious; there was a deliberate attempt on her part, through counsel or otherwise, to assure the father did not know about the adoption proceeding before the Court.

Remarks: Our son learned of the adoption of his son by the stepfather only because an action was pending before the court for grandparent visitation. The attorney for the custodial parent admitted under oath during the court proceedings that the correspondence regarding an adoption hearing would never have been sent until after the thirty days had passed and the rights of the natural father had been forever relinquished.

\*(Reference: Page 177, TOM HEYE - DIRECT; Pages 5, 7, 8: DECISION)\*

#### GRANDPARENT VISITATION:

The Court felt that the statute itself MIGHT be broad enough to cover grandparents in a proper situation since it does use the word "person" - any person. However, the Court felt the case law not definitive as it might be. The Court felt, as is the prime consideration in all issues of this nature, that the test is what is best for the child in this kind of a situation. Grandparent visitation was denied by the Court in the final judgement due to the feelings of animosity on the part of the custodial parent. The Court felt, in the best interests of the child, there was a need for "healing time" between the custodial parent and the paternal grandparents.

Remarks: Statute 26.90.240 in the State of Washington allows a person - any person - to petition the courts for visitation privileges if visitation is in the best interests of the child. The statute does not specifically mention the word "grandparent", however, and misinterpretation of the law is denying privileges to deserving people.



The law needs to be more definitive. Grandparents have a desire to be treated in a higher elevation of importance than the next door neighbor or any person off the street in seeking the right to petition the Court for visitation privileges. By insertion of the word grandparent the bond of biological ties could be appropriately recognized.

\*(Reference: Page 9, Judgement of the Honorable Richard G. Patrick, Superior Court Judge, Verbatim Report of Proceedings, Case No. 81-5-00094-9)

Grandparents are put in the position of need to prove the existence of a negative family situation in the lives of their grandchildren rather than the opportunity to promote a positive strive toward family unity.

\*(Reference: Letter from Lawless & Armstrong, Attorneys at Law)

#### THE ISSUE OF GRANDPARENT VISITATION: State of Washington \*

##### History:

House Bill No. 1049, the legislation for Grandparent Visitation Rights, was introduced in our State of Washington at the 1982 legislative session. The bill was lost in the Law & Justice Committee due to more pressing legislation.

During the 1983 legislative session the Grandparents Visitation Rights legislation was re-introduced as House Bill No. 86. The bill was withdrawn by the sponsor, Representative Duane L. Kaiser, for re-writing.

##### Remarks:

Representative Duane L. Kaiser agreed to sponsor House Bill No. 86, Grandparents Visitation Rights, at the 1983 session of the state legislature. On March 13, 1983 Representative Kaiser appeared on a Seattle KOMO-TV program entitled "Town Meeting" to air the issue of the severance of grandparents from grandchildren. Included as participants in the program were young parents led by Janice Gunnell, founder of Parent's/Children's Rights, and grandparents from the State of Washington led by Lee and Lucile Sumpter, founders of Grandparents/Children's Rights. During the public airing of the program, Representative Kaiser announced to all in attendance that he had withdrawn his sponsorship of House Bill No. 86 for re-writing.

Public reaction to the "Town Meeting" program was overwhelmingly in favor of the grandparents.

Enclosed is a copy of the letter of explanation Representative Kaiser gave for his withdrawal of sponsorship of House Bill No. 86 in which he states: "I received so many letters with so much 'hate' in them from people opposing HB 86 that I reluctantly decided to abandon those loving and deserving grandparents who would so much like to share with their grandchildren. Thus, I asked that the bill not be run during the past session." A copy of my response to Representative Kaiser is also included.\*

The remarks of Representative Kaiser are included in my testimony to allow legislators on the national level to become fully aware that the individual states are not willing to even address the issue of grandparent visitation, much less attempt an avenue of correction.

#### THE PACIFIC NORTHWEST: Grandparent Visitation Rights \*

##### MONTANA:

Section 40-9-102: "Grandparent visitation rights. (1) Except as provided in

subsection (5), the district court may grant to a grandparent of a child reasonable visitation rights.

(2) Visitation rights granted under this section may be granted only upon a finding by the court, after a hearing, that the visitation would be in the best interest of the child.

(3) No person may petition the court under this section more often than once every 2 years unless there has been a significant change in the circumstances of the child; the child's parent, guardian, or custodian; or the child's grandparent.

(4) The court may appoint an attorney to represent the interests of a child with respect to visitation when such interests are not adequately represented by the parties to the proceeding.

(5) This section does not apply if the child has been adopted by a person other than a stepparent or a grandparent. Visitation rights granted under this section terminate upon the adoption of the child by a person other than a stepparent or a grandparent."

IDAHO:

Section 32-1008. Right of grandparents to visitation - When a grandparent or grandparents have established a substantial relationship with a minor child, the district court may, upon a proper showing, grant reasonable visitation rights to said grandparent or grandparents.

OREGON:

Section 109/121 Procedure whereby grandparents may establish visitation rights with grandchildren. (1) (a) When a parent dies leaving a minor child in the custody of the surviving parent, the grandparents of the minor child, if they are the parents of the deceased individual, may petition the circuit court for the county in which the minor child resides for an order providing for visitation rights of the grandparents.

(b) After the commencement of a domestic relations suit, as defined in ORS 107.510, or a proceeding under ORS 108.110, 109.100, 109.103, 109.125 or 419.513, and before a decree or final order therein, any grandparent of a minor child of the party or parties may petition the court in which the suit is filed for an order providing for visitation rights of the grandparent.

(c) After a decree or final order is entered in any proceeding referred to in paragraph (b) of this subsection, a grandparent, who is not a parent of the custodial parent of a minor child, may under ORS 107.135 or 109.165 petition the court which granted the decree or final order for an order altering or modifying so much of the decree or final order as may provide for the grandparent's visitation rights with respect to that minor child or for an order providing for such visitation rights.

## References

run and she wouldn't be able to intervene in this matter, because we had -- and had the hearing not been set for June 23rd on the grandparents' visitation rights, this letter never would have been sent until after the 30 days had passed, because what I expected would happen actually did happen, and that is that once Mrs. Teverbaugh found out that the adoption had gone through and that her son had allowed this to happen, she got on the phone right away, from what I understand, and all of a sudden now Mr. Teverbaugh, Wayne, is claiming that he never knew anything about anything. So that was why, you know, this letter was sent, because as far as I was concerned, the case of grandparents' visitation rights was moot once the adoption had gone through.

When did you find out or hear anything from Wayne Teverbaugh about his reluctance or his opposition to the adoption?

A First time I heard anything from him was when we got an affidavit from -- supplied by Mr. Flynn's office that, you know, this had all been done without any notice whatsoever to him and that we had tried to hide this fact from him, which wasn't the case at all. Had I been trying to hide something, I would have definitely never have sent anything by ordinary mail, and I would never have sent a follow-up letter to put him on notice of what had happened. I wanted this to be absolutely open, but I did not want to

1 alone is enough to support an intentional abandonment, not when  
2 you consider all the circumstances.

3           Next observation. Cheryl wanted to cut herself  
4 off from all contact with Wayne or his parents. That's pretty  
5 obvious. She obtained an unlisted telephone number to make it  
6 difficult to contact her in the usual way. She did not make any  
7 acknowledgment of gifts from the grandparents or from Wayne.  
8 The manner in which she pursued the deprivation proceeding and  
9 the adoption proceeding and the timing indicate that she did  
10 want to cut Wayne off from her life completely, and, of course,  
11 she has the custody of his son.

12           Next observation. Cheryl asked to be left alone.  
13 Now, she asked that of the Teverbaughs, the elder Teverbaughs,  
14 and she asked that of Wayne. Now, in the process of complying  
15 with that, the isolation and the estrangement really continued  
16 and broadened. Now, it shouldn't have been honored by the  
17 father, certainly, at least not to the extent that it was honored,  
18 but does provide some justification for some of the events that  
19 have happened.

20           Next, there were gifts to Nick from the elder  
21 Teverbaughs and from Wayne on occasions such as birthdays,  
22 Christmas, so forth. The gifts had to go through an intermediary,  
23 Cheryl's parents, the Lattas. Cheryl didn't receive those gifts,  
24 I don't think, in the spirit in which they were given because  
25 she really didn't want to have anything coming from Wayne or from

1 rather be someplace else than he would here. And, of course,  
2 his willingness to stay on to try to implement some relationship  
3 is an expression of that concern. His tearing up of the notice  
4 relative to the deprivation proceeding is an indication of his  
5 concern that he didn't want to be deprived of his paternity,  
6 and, of course, that would be communicated to Cheryl. She knew  
7 that. So these raise questions in the mind of the Court relative  
8 to an intentional abandonment. These are things that don't  
9 evidence an intentional abandonment.

10 Next, it seems to the Court that Cheryl's conduct  
11 in regard to the adoption is devious. It just seems to the Court  
12 that the manner in which this has proceeded leaves something to  
13 be desired, not because she doesn't have a basis for feeling the  
14 way she does, but it seems to the Court that there was a deliber-  
15 ate attempt on her part through counsel or otherwise to see that  
16 Wayne didn't know about that adoption proceeding, and that doesn't  
17 seem proper to me, especially in view of the fact that she knew  
18 very well what his position was about the deprivation proceeding,  
19 only a very short time earlier than that.

20 It seems to me that, in fairness, she knew where  
21 the elder Teverbaughs lived. She knew that they knew where  
22 Wayne was. She knew how to get a hold of him if she  
23 really wanted to. I don't think she really wanted to, and I  
24 think the record is indicative of that fact. It was easier for  
25 her not to get a hold of him, but I just don't think that is



1 fair under the circumstances. There is no way for the Court  
2 to make a finding that Wayne had notice of that adoption pro-  
3 ceeding. Publication in the Frosser Record Bulletin sure  
4 doesn't do it. The return of registered letters sure doesn't do  
5 it, and the fact that some letters that were not registered were  
6 returned certainly doesn't do it. He may have gotten some letters,  
7 but there would be no way for the Court to make that finding, and  
8 it hasn't been proven.

9 It seems to me that the crowning blow was failure  
10 to disclose to the Teverbaughs or to Wayne the facts of this  
11 adoption proceeding when there was a visitation proceeding  
12 that was pending. That just really doesn't seem at all proper  
13 to me. It is devious. And withholding information that should,  
14 in fairness, have been communicated to the Teverbaughs and to  
15 Wayne, that all hurts Cheryl's position in this situation when  
16 one looks at that whole picture.

17 Next observation. The time involved in this case  
18 between these very important proceedings that have been taking  
19 place is really pretty short. The first petition for deprivation  
20 was only a few months after the divorce in 1989. We're only talk-  
21 ing about a year and a half from the divorce of these principle  
22 parties until an adoption proceeding is filed, alleging abandon-  
23 ment. The new marriage to Mr. Zeller is only four months old  
24 when this petition is filed for adoption. It seems to the Court  
25 that things are just moving too fast to establish any contested  
abandonment or desertion.

1           So on the basis of those observations, the Court  
2 would conclude that the circumstances do not show a wilful  
3 substantial lack of regard for parental obligations. The facts  
4 do not show an intention on the part of Wayne Teverbaugh to  
5 permanently relinquish all claims to Mick.

6           Now, the thing that the parties have to realize  
7 if they don't already is that a proceeding like this is never  
8 over. It can happen again. If Wayne doesn't fulfill his  
9 parental role, he may be back here again, faced with this kind of  
10 proceeding. So it is never over, and the parties should realize  
11 that when it comes to the parental rights and custody, it is  
12 never over. It is a continuing thing that goes on until that  
13 child is of age.

14           All right, the next issue is whether or not the  
15 grandparents' petition for visitation rights with Mick should  
16 be granted by the Court. Now, it seems to the Court that the  
17 statute, itself, might be broad enough to cover grandparents in  
18 a proper situation. 26.90.240 does use the word person, any  
19 person. The case law is not as definitive as it might be.

20           Obviously, it doesn't require any change of  
21 circumstance under the law and, obviously, the test is the best  
22 interests of the child in this kind of a situation. Even though  
23 it may be proper under the law and even if it is proper under the  
24 law for the Court to afford visitation rights to grandparents in  
25 a situation of this kind, the Court would not so order visitation

LAW OFFICES OF  
Lawless & Armstrong

GREGORY J. LAWLESS  
JAN R. ARMSTRONG

PARKWAY PLAZA, SUITE C  
640 JADWIN AVENUE  
RICHLAND, WASHINGTON 99352

TELEPHONE  
(509) 943 4681

August 10, 1981

Ms. Roberta Teverbaugh  
1867 Stevens Drive  
Richland, Wa. 99336

Dear Ms. Teverbaugh:

I researched your question. Without a showing of abuse or neglect, grandparents do not have visitation or custodial rights to children.

Sorry.

Sincerely,

LAWLESS & ARMSTRONG

*Gregory J. Lawless*  
Gregory J. Lawless  
Attorney

GJL/kb

STATE REPRESENTATIVE  
DUANE L. KAISER  
2ND DISTRICT  
4802 180TH ST. E  
TACOMA, WA 98648  
RES. TEL. (206) 837 3748  
OLY. TEL. (206) 763 7912

State of  
Washington  
House of  
Representatives



FOURTY EIGHTH LEGISLATURE  
1983-84  
COMMITTEES  
AGRICULTURE, FORESTRY  
COMMERCE & ECONOMIC DEVELOPMENT  
STATE GOVERNMENT

June 13, 1983

Mr. & Mrs. Frank Teverbaugh  
1867 Stevens Drive  
Richland, WA 99352

Dear Mr. & Mrs. Teverbaugh:

Now that the session is over I wanted to let you know the reason why nothing further developed with HB 86, the grandparents' visitation rights bill. When I agreed to sponsor HB 86 I was of the firm belief that many good grandparents were being denied the opportunity to visit and love their grandchildren and I'm still of that belief. I received so many letters with so much "hate" in them from people opposing HB 86 that I reluctantly decided to abandon those loving and deserving grandparents who would so much like to share with their grandchildren. Thus, I asked that the bill not be run during the past session.

A bill dealing with family court laws; SHB 167, was amended to delete references to "spouse" and replace with "party" (a move I assume would give grandparents more rights); however, the bill didn't make it out of House Rules Committee for third reading by the end of session.

I appreciated all your letters this past year and hope that in the future alternatives will be explored to remediate this emotional issue.

Sincerely,

*Duane L. Kaiser*

DUANE L. KAISER  
State Representative

DLK:cr

June 18, 1983

Duane L. Kaiser  
 State Representative  
 4802 180th Street E.  
 Tacoma, WA 98446


Subject: Grandparents Visitation Rights

Representative Kaiser:

I received your vaguely apologetic letter regarding your withdrawn sponsorship of House Bill 86, Grandparents Visitation Rights. I find your line of reasoning totally unacceptable. To bow to letters of "hatred" and reluctantly abandon an obligation in which your beliefs are contradictory is not a decision to be admitted with pride. The adults are the carriers of the "hatred" yet it is the children who suffer.

I challenge you to research books written by noted authorities in the area of child psychology and personally determine if your decision was a wise one.

Sincerely,

  
 (Mrs.) Roberta J. Teverbaugh  
 1867 Stevens Drive  
 Richland, Washington 99352

/rjt

cc: Grandparents/Children's Rights, Inc.  
 (Lee and Lucile Sumpter)  
 Foundation for Grandparenting  
 (Dr. Arthur Kornhaber)

Representative Mario Biaggi, New York  
 Senator Henry M. Jackson, Washington  
 Senator Slade Gorton, Washington  
 Representative Sid Morrison  
 Representative Shirley Hankins

w/enclosure: Letter from Duane L. Kaiser  
 dated June 13, 1983.



## HOUSE BILL NO 86

State of Washington      48th Legislature      1983 Regular Session

by Representatives Kaiser, Struthers, Armstrong, Egger, McMullen, Halsan, Dickie, McClure, Haugen, Vekich, Fisch, Monohon, Galloway, Patrick, Gallagher, Johnson, Ebersole, Stratton, Burns, Hine, Clayton, Zellinsky, Smitherman, Isaacson, Martinis, Addison, Crane, Miller, Hanksins, Todd, Smith, Wang, Tanner and Long

Read first time January 17, 1983 and referred to Committee on Judiciary.

1 Crane, Miller, Hanksins, Todd and Smither AN ACT Relating to  
2 grandparents' visitation rights; amending section 24, chapter 157,  
3 Laws of 1973 1st ex. sess. as amended by section 1, chapter 271, Laws  
4 of 1977 ex. sess. and RCW 26.09.240; and adding a new section to  
5 chapter 11.02 RCW.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 Sec. 1. Section 24, chapter 157, Laws of 1973 1st ex. sess. as  
8 amended by section 1, chapter 271, Laws of 1977 ex. sess. and RCW  
9 26.09.240 are each amended to read as follows:

10 A parent not granted custody of the child is entitled to  
11 reasonable visitation rights unless the court finds, after a hearing,  
12 that visitation would endanger the child's physical, mental, or  
13 emotional health. The court may order visitation rights for any  
14 person when visitation may serve the best interest of the child  
15 whether or not there has been any change of circumstances.

16 Any person may petition the court for visitation rights at any  
17 time including, but not limited to, custody proceedings. Any  
18 grandparent so petitioning the court shall be granted visitation  
19 rights unless the court finds that such visitation would not be in  
20 the best interest of the child.

21 The court may modify an order granting or denying visitation  
22 rights whenever modification would serve the best interests of the  
23 child, but the court shall not restrict a parent's visitation rights  
24 unless it finds that the visitation would endanger the child's  
25 physical, mental, or emotional health.

26 NEW SECTION. Sec. 2. There is added to chapter 11.02 RCW a new  
27 section to read as follows:

28 Upon the death of the parent of a child, a grandparent of the

## Sec. 2

1 child may at any time petition the court for visitation rights to the  
2 child. A grandparent so petitioning the court shall be granted  
3 visitation rights unless the court finds that such visitation would  
4 not be in the best interest of the child.

AN ACT GENERALLY REVISING THE LAW ON GRANDPARENT VISITATION RIGHTS; AMENDING SECTION 40-9-102, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 40-9-102, MCA, is amended to read:

"40-9-102. Grandparent visitation rights. (1) Except as provided in subsection (5), the district court may grant to a grandparent of a child reasonable visitation rights.

(2) Visitation rights granted under this section may be granted only upon a finding by the court, after a hearing, that the visitation would be in the best interest of the child.

(3) No person may petition the court under this section more often than once every 2 years unless there has been a significant change in the circumstances of the child; the child's parent, guardian, or custodian; or the child's grandparent.

(4) The court may appoint an attorney to represent the interests of a child with respect to visitation when such interests are not adequately represented by the parties to the proceeding.

(5) This section does not apply if the child has been adopted by a person other than a stepparent or a grandparent. Visitation rights granted under this section terminate upon the adoption of the child by a person other than a stepparent or a grandparent."

STATE OF MONTANA

## Grandparents' Visitation Statute--Idaho

213

PARENT AND CHILD

32-1008A

**32-1007. Rights of parents over children.**

**Cited in:** Pullman v. Klingenberg (1973), 95 Idaho 424, 510 P. 2d 488.

**ANALYSIS**

**Appointment of coguardians.**  
**Burden of proving right to custody.**  
**Parent may lose right.**  
**Parent's right to custody of child.**

**Appointment of Coguardians.**

The magistrate's order appointing the grandparents coguardians of two minor children was a binding adjudication that the best interests of the minor children would be served by the requested appointment. Revello v. Revello, 100 Idaho 829, 606 P.2d 933 (1979).

**Burden of Proving Right to Custody.**

A father, seeking custody of his minor son by writ of habeas corpus from the maternal grandparents after the death of the mother, sustained his burden of proof by showing that he was the natural father of the child and the burden was then upon the defendants to prove that he was unfit or unable to properly care for the child or that he had forfeited his right by abandonment. Blankenship v. Brookshier, 91 Idaho 317, 420 P. 2d 800.

**Parent May Lose Right.**

A father who, after a divorce in which custody of his children was given to his wife and after the wife's remarriage and removal to the state of Connecticut, failed to make substantial contribution to their support, to visit them, or to make sufficient inquiry to learn of their whereabouts was not entitled to their custody as against their step-father after the death of their mother. Clark v. Jelinek, 90 Idaho 592, 414 P. 2d 892.

**Parent's Right to Custody of Child.**

If the parent is competent to transact his or her own business, and is not otherwise unsuitable, the custody of the child is not to be given to another, even though such other may be a more suitable person. Spaulding v. Children's Home Finding & Aid Soc., 89 Idaho 10, 402 P. 2d 52.

In normal situations, the natural parents are entitled to custody of the child unless it is affirmatively shown that the parent has abandoned the child or that he is unsuitable. Yearsley v. Yearsley (1972), 94 Idaho 667, 496 P. 2d 666.

**32-1008. Right of grandparents to visitation.** — When a grandparent or grandparents have established a substantial relationship with a minor child, the district court may, upon a proper showing, grant reasonable visitation rights to said grandparent or grandparents. [I.C., § 32-1008, as added by 1972, ch. 125, § 1, p. 249.]

**32-1008A. Responsibility of relatives to participate in the cost of nursing home care.** — (1) [Effective October 1, 1983] When it is necessary for a person to reside as a medicaid patient in a licensed skilled nursing facility or licensed intermediate care facility as either is defined in section 39-1301, Idaho Code, such person's relatives as described in this section shall be responsible to the extent of their ability to repay the department of health and welfare for the cost of necessary medical or remedial care provided by the facility. Each responsible relative of a medicaid recipient may be required to pay not more than twenty-five percent (25%) of the amount which was paid for such patient under the medical assistance program pursuant to chapter 1, title 56, Idaho Code, but not more than one hundred percent (100%) of the amount which was paid under the medical assistance program shall be collected by the department from all responsible relatives of a medicaid recipient.

(2) [Effective October 1, 1983] Relatives responsible to participate in the cost of skilled or intermediate facility care include spouses, natural and adoptive children, or natural or adoptive parents when the patient is under eighteen (18) years of age, or blind, or disabled as defined in section 161-4(a) of the social security act.

may grant the relief sought without the putative father's consent. [1975 c.640 §8]

**109.100 Petition for support.** (1) Any minor child or state agency on behalf of that minor child may, in accordance with ORCP 27 A., apply to the circuit court in the county in which the child resides, or in which the natural or adoptive father or mother of the child may be found, for an order upon such child's father or mother, or both, to provide for the child's support. The minor child or state agency may apply for the order by filing in such county a petition setting forth the facts and circumstances relied upon for such order. If satisfied that a just cause exists, the court shall direct that the father or mother appear at a time set by the court to show cause why an order of support should not be entered in the matter. If it appears to the satisfaction of the court that such child is without funds to employ counsel, the court may make an order directing the district attorney to prepare such petition and order to show cause.

(2) The provisions of ORS 108.110 (3), 108.120 and 108.130 shall apply to proceedings under subsection (1) of this section. [1963 c.497 §2; 1975 c.458 §14; 1979 c.90 §2; 1979 c.284 §100]

**109.103 Proceeding to determine custody or support of child.** If a child is born out of wedlock and paternity has been established, either parent may initiate a civil proceeding to determine the custody or support of the child. The proceeding shall be brought in the circuit court of the county in which the child resides or is found or in the circuit court of the county in which either parent resides. The parents shall have the same rights and responsibilities regarding the custody and support of their child that married or divorced parents would have, and the provisions of ORS 107.095 to 107.425 that relate to the custody or support of children shall be applicable to the proceeding. [1975 c.640 §9]

109.105 [1969 c.461 §1; renumbered 109.610]

109.110 [Amended by 1961 c.338 §1; 1967 c.534 §14, repealed by 1969 c.619 §15]

**109.112 Mother, father or putative father deemed to have attained majority.** The mother, father or putative father of a child shall be deemed to have attained majority and, regardless of age, may give authorizations, releases or waivers, or enter into agreements, in adoption, juvenile court, filiation or other proceedings concerning the care or cus-

tody of the child. [1975 c.640 §10]

109.115 [1969 c.271 §2; renumbered 109.620]

**109.116 Validity of putative father's authorization, release or waiver.** Any authorization, release or waiver given by the putative father with reference to the custody or adoption of the child or the termination of parental rights shall be valid even if given prior to the child's birth. [1975 c.640 §11]

**109.118 Validity of decrees or orders entered prior to July 3, 1975, concerning custody, adoption or permanent commitment of child.** All decrees or orders heretofore entered in any court of this state concerning the custody, adoption or permanent commitment of a child are hereby declared valid upon the expiration of 30 days after July 3, 1975, notwithstanding that notice was not given to the putative father of the child. [1975 c.640 §13]

109.120 [Repealed by 1969 c.619 §15]

## VISITATION RIGHTS OF GRANDPARENTS

**109.121 Procedure whereby grandparents may establish visitation rights with grandchildren.** (1) (a) When a parent dies leaving a minor child in the custody of the surviving parent, the grandparents of the minor child, if they are the parents of the deceased individual, may petition the circuit court for the county in which the minor child resides for an order providing for visitation rights of the grandparents.

(b) After the commencement of a domestic relations suit, as defined in ORS 107.510, or a proceeding under ORS 108.110, 109.100, 109.103, 109.125 or 419.513, and before a decree or final order therein, any grandparent of a minor child of the party or parties may petition the court in which the suit is filed for an order providing for visitation rights of the grandparent.

(c) After a decree or final order is entered in any proceeding referred to in paragraph (b) of this subsection, a grandparent, who is not a parent of the custodial parent of a minor child, may under ORS 107.135 or 109.165 petition the court which granted the decree or final order for an order altering or modifying so much of the decree or final order as may provide for the grandparent's visitation rights with respect to that minor child or for an order providing for such visitation rights.



However, a grandparent may petition a court under this paragraph only when the grandparent did not file a petition under paragraph (b) of this subsection or when there has been a change in circumstances relating to the custodial parent or the minor child such as is required to allow the court to reconsider the provisions of the decree that provide for the future custody, support and welfare of the minor child.

(2) A petition filed with a court under subsection (1) of this section shall state the following:

(a) The names of the petitioners.

(b) The names, addresses and dates of birth of all the minor children to whom the petitioners seek visitation rights.

(c) The names and addresses of the parents of the minor children.

(d) When the petition is filed under paragraph (a) of subsection (1) of this section, the name and date of death of the deceased parent of the minor children.

(e) When the petition is filed under paragraph (b) or (c) of subsection (1) of this section, the relationship of the petitioners to the parties in the proceeding.

(f) When the petition is filed under paragraph (b) of subsection (1) of this section, if the petitioner is asserting a change in circumstances as justification for the petition, the facts constituting the asserted change in circumstances.

(3) When a petition is filed with a court under this section, notice of the filing and a copy of the petition shall be served on the parents of the minor children named in the petition in the manner provided by law for service of a summons.

(4) When a petition is filed under this section, if it appears from the petition that the petitioners may seek visitation rights under this section, the court shall conduct a hearing to determine whether an order creating visitation rights will be issued. The court shall cause notice of the time and place of the hearing to be given to the parents of the minor children named in the petition. The court may require the attendance of the parents and of witnesses as in other civil cases. When the petition has been filed under paragraph (b) of subsection (1) of this section, the court may conduct the hearing on the petition as part of the proceeding or as a separate proceeding, and the order creating visitation rights, if one

is issued, may be incorporated in and made a part of the decree or final order.

(5) Any order creating visitation rights under this section shall be according to the court's best judgment of the facts of the case and shall include such conditions and limitations as it deems reasonable. In making or modifying such an order, the court shall be guided by the best interests and welfare of the child.

(6) Filing fees for proceedings under this section shall be those set forth in ORS 21.110.

(7) As used in this section:

(a) "Grandparent" does not include a step-grandparent.

(b) "Minor child" means a natural minor child, provided the paternity of such child has been established under ORS 109.070 or acknowledged under ORS 109.092.

(8) The provisions of this section shall not apply if paternity of the minor child is or has been denied throughout a contested proceeding. (1979 c 776 §2)

**109.123 Power to grant visitation rights discretionary; effect on care and custody orders.** (1) The power of a court under ORS 109.121 and this section to grant visitation rights to grandparents is discretionary and shall be exercised only when the court determines that it would be in the best interests and welfare of the minor children involved.

(2) Nothing in ORS 109.121 and this section shall be construed to affect the power of a court under ORS chapter 107 to provide for the future care and custody of the minor children of a marriage, or to allow grandparents of minor children to contest such custody decisions of the court. (1979 c 776 §3)

*Note:* 109.123 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 109 or any series therein by legislative action. See the Preface to Oregon Revised Statutes for further explanation.

## FILIAION PROCEEDINGS

**109.124 Definition for ORS 109.125.** As used in ORS 109.125, a child born out of wedlock means a child born to an unmarried woman, or to a married woman by a man other than her husband, if the conclusive presumption in ORS 41.350 (6) (1979 Replacement Part) and 109.070 (1) does not apply. (1979 c 246 §4)

Before serious consideration was given to the attempt to seek grandparent visitation through the courts I visited with one of the leading child psychologists in our area and audited a workshop he gave concerning child behavior. I discussed our family problem with him and, due to the sudden severance of seven loving members of our extended family from his life, the emotional health of our grandson. I felt it urgent to be given advice from one learned in the field of dealing with young children to be affirmed of a decision not based on emotion but rather on factual reasoning. The agonizing question to me has been this: is it in the best interests of the child to accept a severance of the extended family or is it in the best interests of the child to seek to restore family unity? The emphatic reply of the doctor of child psychology was this: "it is imperative for the emotional well-being of your grandson to press - and press hard - for visitation privileges; time elapsed could be extremely detrimental to his emotional health." With the urgency expressed by the psychologist, and much research of material available in libraries, our family became convinced beyond a doubt of our need to continue to seek visitation privileges through the court system of our state.

Nearly three years have unfortunately elapsed since our initial request for grandparent visitation and we have learned first-hand of the detriment it has caused to our grandson. When we last saw him in our home he was a well-adjusted, loving, sensitive, extroverted child; he is now, at the tender age of seven, a child who has verbally expressed his anger and hostility toward his father and all his extended paternal family. His attitude has been a learned one allowed to fester and to grow in a negative atmosphere of animosity and vindictiveness. Firmly convinced of the danger to society as a whole, I searched for answers from families who have lived with the same problem to discover what it has done to their lives and the lives of the children involved. Our family resides in Richland, Washington, a town of approximately 30,000 people - a very minute segment of the population of our country. To quickly point out the national problem we are facing, the answers came to me in my own town within blocks of my home.

Face to face visits with two grandmothers whose testimonies I relate gave me not only an enlightenment but also a renewed vigor to put forth an even greater effort to seek a solution to a problem that is destroying the very underpinnings of our society.

#### TESTIMONY OF THE DETRIMENTAL HARM SEVERANCE CAUSES IN THE LIVES OF CHILDREN:

Pat is a lovely middle-aged woman, a registered nurse, a homemaker and mother of three grown children. As she painfully shared her childhood with me tears welled in her eyes and the evidence of the burden she has carried with her for over forty years was edged with sadness. Pat's parents divorced when she was small and for some time she "bounced back and forth" from mother to father, an atmosphere she feels the resiliency of a child can easily handle when they are surrounded by the love of many people. World War II was being waged at the time and Pat felt the loss of her father greatly when he was assigned to overseas duty. She continued to live with her mother, whom she felt did not love her. Physical and emotional abuse resulted, the cause of which she now feels was immaturity and the inability to cope on the part of her mother in the role as a young parent. Two stepfathers came into her life and her memory of them is a good one. Although her mother had chosen to lose contact with the paternal extended family, the only thing that sustained Pat through the years of her childhood was the constant thought that she really did have somebody out there who cared about her. Unaware of what to do in her intolerable family situation, Pat wrote an "escape hatch" letter to her paternal grandmother asking her for help. Her grandmother immediately traveled from Washington to the State of Missouri and petitioned the court for custody of her granddaughter. The court felt, due to the detrimental family situation, the love and concern displayed by the grandmother was of greater priority than age. On the witness stand Pat - as a child of seven, reaffirmed that choice. Richland, Washington became Pat's new home and she was raised by her grandmother, with the added support of an aunt. Eventually Pat's father, along with his British bride, worked himself back into Pat's life, but the relationship still remains one void of a bond cemented in love as a father and daughter would ideally be when allowed to share their lives on a continuing basis. A deep sadness was in her eyes as Pat told of the bitter resentment she carried then, and which remains with her forty years later, of her mother's choice to sever her from her ties with her family. "I love my mother", said Pat to me, "but only because she is my mother. A true mother-daughter relationship will never exist between the

two of us. Too many things have happened." Although Pat has developed a closeness with the offspring of her parents' subsequent marriages, the parental bonds are without true meaning. Deep scars remain, the crevices of which can never be restructured.

Though I had intruded on Pat's innermost feelings, my final inquiry was of our grandson and the urgency we felt to reunite him with our family. I now quote her thoughts to you: "By all means keep trying. It doesn't matter if a child lives with a stepfather or a stepmother or a number of each. They have the adjustment of youth in these situations. It is essential for a child to have at least one person they can have a close attachment to - whether it be a parent or a member of the extended family - one who can be counted on at all times. But how much better it is to have a great many people who care about them."

As Pat and I parted company she made one ironic closing remark: "Our son and his wife were recently divorced. We have a good relationship with our daughter-in-law now and are allowed to enjoy our grandson - but she is a young and attractive woman who will surely remarry. If ever I can be of support in your efforts to restore family unity I would be happy to help. My home could be next!"

LIKE A CANCER THAT SILENTLY CUTS AWAY AT THE REAL BEAUTY OF LIFE, THE SEVERANCE OF FAMILIES LIES IN WAIT IN EVERY HOUSEHOLD OF OUR COUNTRY!

#### TESTIMONY OF THE BENEFICIAL RESULT OF THE GRANDPARENT-GRANDCHILDREN REUNION:

Mildred is a grandmother in her late fifties. After the divorce of her daughter and son-in-law several years ago, custody of their four boys was granted to the father. The older three boys stayed with their father and the youngest, a four year old, was given to his maternal grandparents to raise. Convinced the young boy had been a victim of both physical and emotional abuse in his family, the grandparents went to court to gain legal custody. The court action was lost to the grandparents and their grandson was returned to his father in February of 1977 after living in the home of his grandparents for fifteen months. A few months later the grandparents visited their grandson in the home of his father. The grandparents then did not see the boys again until April, 1978 at a family wedding. When the grandson who had been raised in their home emerged from the car he ran across the church lawn to his grandparents and was then allowed to sit through the wedding ceremony with them. Later that same year, when the children were in town with their father, they made an effort on their own to contact their grandparents and they visited for about an hour. The following year the grandparents were allowed to visit the children at their mother's home and later that same year at a picnic with their mother. In 1980 the stepmother of the children allowed the grandson and his new stepsister to go camping for a week-end with the grandparents. Each visit has allowed the original bonding to grow and flourish and, through circumstances of life and reunions initiated by both the grandchildren and grandparents, the young children involved have been reunited in their biological family ties.

Mildred was quick to tell me: "The bonding that formed in early years still remains and the years of grandparent-grandchildren separation have somehow just "evaporated." The relationship was always good and positive and, now that the children are back in our lives, we have discovered the strength of family ties and bonding are still very much intact. There has been no difficulty whatsoever reuniting with the grandchildren after being apart for so long. There has been a definite change for the better in the lives of all of us. If allowed to happen, reunion of grandparents and grandchildren CAN be accomplished and to the benefit of everyone involved......

LIVING TESTIMONY THAT, WHEN ALLOWED TO OCCUR, THE REUNION OF GRANDPARENTS AND GRANDCHILDREN CAN BE ACHIEVED TO STRENGTHEN SOCIETY AS A WHOLE.

#### MEDIA COVERAGE:

On March 13, 1983 our family took part in a TV program called "Town Meeting", sponsored by KOMO-TV in the City of Seattle, Washington, to air the national problem of the severance of grandparents from grandchildren. Town Meeting is a "watered down" version of the Phil Donahue Show where a topic is thrown out to all participants for debate. Appearing on the show were young parents led by Janice Gunnell, founder of Parent's/Children's Rights. Her story was a

sad one of child abuse and no one present questioned the right to her feelings or the denial of visitation. Her story was also the unusual one.

Representing the grandparents were Lee and Lucile Sumpter, the founders of Grandparents/Children's Rights, who have given so willingly in their effort to help families regain their biological ties across our nation.

The attitude expressed by the young parents was indeed frightening. They were devoid of emotion as they uttered phrases that grandparents did nothing more than present a constant threat to their supreme authority. The leader of the young parents movement remarked to the Sumpters: "I disagree with about 100% of what you are saying!"

Remarks: Never once as a young parent did I question the privilege of grandparents sharing in our family life. Rather, I was grateful for the strength and loving support of the entire extended families. The answers given to the children of the severance of loved ones from their lives has been an agonizing curiosity for me. After the TV program ended I made it a point to personally ask a great number of the young parents just what they told their children about the sudden absence of people from their lives. Amazement came with their responses. "Oh, I don't know, it's hard" - "they don't say anything so I don't say anything" was the shallow depth of their answers.

In essence, the young children severed from families are often being given NO answers to what must be monumental feelings of total rejection in their young lives. As an adult able to recognize, though hardly understand, the feelings of bitterness and animosity shown to members of an extended family due to their biological relationship, I find myself totally confused and helpless. How devastated must these young children feel who are given none of the answers - no explanation at all?

#### PUBLIC AWARENESS:

One June 30, 1983 I spoke before a gathering of the Columbia Kiwanis Club in our Tri-Cities, Washington area to give public awareness to the fact that the distinct possibility of the severance of grandparents from grandchildren lies in wait in every household in our country. The president of Columbia Kiwanis, in his gracious thank-you letter, made the following remarks: "The membership and their wives were very pleased with your presentation even though the subject was shocking and disturbing. I wish you success with the attempts that you have launched both at the personal and local level and for those of us who may one day find ourselves in the same position, may your national efforts at legislation to give rights to grandparents be enacted at the earliest possible date."



November 7, 1983

United States Senate Judiciary Committee  
Senate Office Building  
Washington DC 20510

R7: Senate Concurrent Resolution 40, The Grandparent Visitation Act

Dear Honorable Senate Judiciary Members:

Time is of the essence so I am addressing this letter to you as an entire body and asking my friend Roberta Teverbaugh to please it for me at the hearing.

I am a grandmother who has court appointed visitation rights granted to me by a judge who also is a grandparent. How grateful I've always been to have had a judge who understands the importance of grandchild-grandparent relationship.

The past five years, my husband(now deceased) have exercised every visitation time given us by the courts.

I am very concerned about my oldest grand son because he is not growing properly. I have been informed by several doctors that if children are unhappy they refuse to grow. I'm enclosing copies of letters written by my family physician as proof of my concern. It is a form of child abuse, but, a very subtle one indeed.

My ex-son-in-law has mellowed over the past two years and is not threatened by my seeing the children. In fact, he has been exceptionally nice to me of late and I welcome the change. Part of that change is due to the recent breakup of his marriage to the stepmother.

When the grandkids are in my home for visitation they always remark, "Sure wish grandpa was still alive. He was so much fun." I am so glad they got to know their grandpa even if it was only for a few short years. Those good times will always be good memories.

For those of you who have the power in your hands to pass the Grandparents Visitation Rights Law, please, don't sit on the fence. Get on with it. Know that you are giving all grandchildren their inherent right to see their grandparents.



We are living in a time of the "extended family" because of the high divorce rate. So many young people are unhappy with their lives and are continuously searching for answers. Poor self image, low self esteem and a hurting deep inside makes them lash out at everyone to "get even". The attitude of "I'll show them" needs to be changed. They are not thinking of the children. The family nucleus must be mended soon or we shall fall internally. A grandparents' love is an extension of our love for our own children. Do not deny us the right!

Very truly yours,

Ruth E. Robinson  
1912 S. Ninth Ave.  
Yakima, WA 98903

---

WILLIAM A. GROMKO, M.D.  
1015 S. 43TH AVENUE  
YAKIMA, WASHINGTON 98908  
TELEPHONE 965-0770

August 7, 1979

To Whom It May Concern:

Justin and Jason Westphal saw me, William A. Gromko M.D., on March 5th, May 21st, and August 2nd of 1979. Justin is an intelligent 6 year old, whose medical problems consist of an innocent heart murmur and weight loss over a period of 5 months. A complete physical exam was done on August 2, 1979 and revealed no physical cause for the weight loss, so I must conclude that he is not eating enough. At the same time, I also saw Jason. A complete exam done on August 2, 1979 revealed that he had lost 4 lbs. in 5 months and was physically in good health, and I also must conclude that he is not eating enough.

Jason's percentiles on anthropometric charts show a drop in his weight from the 35th percentile to barely the 5th percentile.

Sincerely,

*William A. Gromko*  
William A. Gromko, M.D.

WILLIAM A. GROMKO, M.D.  
1015 E. 40TH AVENUE  
YAKIMA, WASHINGTON 98908  
TELEPHONE 945-0770

August 16, 1979

Dept. of Social and Health Services  
P.O. Box 751  
Vancouver, Washington 98660

Atten: Child Protection Service

Memo

RE: Jason and Justin Westphal

Justin: 6 year old doing well, gaining weight. Gained  
1½ lbs in 12 days.

Jason: 7 Year old gaining weight well, gained nearly 3 lbs.  
in 12 days. More alert now. Stated he didn't want  
to go back to his home in Vancouver and he mentioned  
that his Dad would just spank him and not feed him.

*William A. Gromko*

ROGER L. BRACCHI, M.D.  
210 SOUTH 11th AVENUE SUITE 43  
YAKIMA, WA 98902  
(509) 525-6542

August 25, 1981

TO WHOM IT MAY CONCERN:

Justin Westphal was weighed in this office  
on 8/3/81 and found to weigh 60 lb.. On  
8/14/81 his weight was 62 lb. Jason West-  
phal was weighed on 8/3/81 and found to  
weigh 57 lb. He was weighed again on 8/14/81  
and found to weigh 58½ lb.

Sincerely,

*Roger L. Bracchi, M.D.*  
Roger L. Bracchi M.D.

# Grandpa can ask for visit rights

Dear Action: Last week (March 9) you quoted an attorney as saying under Washington state law grandparents can now petition the court asking for visiting rights to see their grandchildren.

In 1974, when our daughter died, we took care of our two grandchildren until our son-in-law remarried. When he took custody of the children, he decided we should no longer see them.

When we went to our lawyer, he told us the state had no "grandparents visitation rights law."

Well, with the help of the lawyer, we drew up a proposed amendment to that law and gave it to our legislator.

He introduced the bill and it was passed by the Legislature in 1977.

The amendment giving us visiting rights serves as the vital connection between grandparents and grandchildren when parents foolishly choose to have it severed. — R.R., Yakima.

Dear R.R.: Prior to 1977, only parents — separated by divorce — could petition for visiting rights with children in custody cases.

But thanks to R.R. and her husband, the law was amended to read that "any" person could ask a judge for visiting rights which had been denied by the parent having custody of the kids.

Upon passage of the amendment they spawned, R.R. and her husband went to court in June 1978, and a judge granted the couple the right to have their grandchildren visit them several weeks and weekends during the year.

Curiously, one wonders how many attorneys — and judges — are aware of this very important

Action  
Maribeth  
Morris



change in the state's child visitation statute.

R.R. reports that as late as 1980, a couple in Kitsap County was turned down by a judge in their request to see the grandkids.

The judge turned them down on grounds there was no authorizing legislation allowing such rights to be granted.

The couple was represented by a lawyer who was also unaware of the 1977 amendment.

Somehow, R.R. heard about the case and notified the grandparents that there indeed was now legislation to support their request.

The grandparents have since appealed the decision against them to the State Supreme Court.

Of course, the judge must still decide whether visiting rights by the grandparents are in the best interests of the child.

As we've said before, a loving grandparent is a very special relationship which, unfortunately, many children do not enjoy these days for one reason or another.

We must thank our Yakima grandparents for paving the way so that others in their position are no longer barred from requesting visitation rights.

The change is reflected in the Revised Code of Washington under "Domestic Relations": 26.09.240.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR CLARK COUNTY

HENRY and RUTH ROBINSON, )  
husband and wife, )  
Petitioners, )  
vs. )  
JOHN WESTPHAL, )  
Respondent. )

No. 7 1 1 5 4

June 21, 1978

COURT'S DECISION

THE COURT: These are difficult cases for parents, grandparents, attorneys, judges, so forth, social workers. I have known Mr. Beh when he was working here in Clark County, I was an active Superior Court judge, and I respect his opinion. However, it just seems to me from my years of experience in court, and as a father and as a grandfather, I think the best welfare of these two boys, these grandchildren, are that they get to know their grandparents better.

I think that there have been problems here between the grandparents, the former son-in-law, the father of the two boys. It's pretty hard I should imagine to see somebody like Georgia coming in, taking the place of their daughter as the mother of these children. I think she is doing what she thinks is best for the children; I think that Mr. John Westphal is doing what he

1 thinks is best for the children. I think that the Robinsons' have  
2 gotten close to these grandchildren and in their way of thinking  
3 they're doing their best for the grandchildren.

4 I think we have got to set up some ground rules. The past  
5 is over. We are right here now: what's going to be best for these  
6 two boys. I think for the two boys they should know their grand-  
7 parents. So under some strict rules for grandparents, parents,  
8 stepmother, now the mother, there should be some visitation right:

9 The fact that Mr. Westphal told about how when the grand-  
10 parents came the boys just dropped everything and wanted to see  
11 them, ran out to the car, I think that right there shows what  
12 these grandsons think about their grandparents.

13 In regard to visitation this summer, I think it should be  
14 on the basis of just one week. Then I should think that next  
15 summer there should be a period of two weeks. Now I can't see  
16 a week early in the summer, a week just before school starts.  
17 Those children have to be home in their own home before school  
18 starts so they can get back into the groove according to what the  
19 parents have, so I should think not this summer but two summers  
20 from now, or a year from now that it should be a period of two  
21 weeks in the summer. This year I should think that -- what about  
22 sometime during -- one week during the month of July?

23 Now Mr. Westphal, what are your plans? Do you have a  
24 holiday vacation coming up? When do you take your time off work?

25 MR. WESTPHAL: Well, I've got a week vacation starting



1 the 3rd of July.

2 THE COURT: All right. That is a week's vacation.

3 MR. WESTPHAL: I go back on the 10th.

4 THE COURT: What about say they get the boys for a week  
5 commencing a long about Saturday the 15th of July?

6 MR. WESTPHAL: My birthday is the 24th. I'd rather have  
7 them home for that.

8 THE COURT: Well, would you rather have them then for say  
9 the -- how about the week of the 10th of August, the 5th of  
10 August.

11 MR. WESTPHAL: That would be fine.

12 THE COURT: All right. They have them for the week of the  
13 5th of August. Or maybe it would be better traveling on the high-  
14 way to have them here in the summer. How about having them for  
15 a week commencing the 1st of August next year, have them two  
16 weeks commencing the 1st of August?

17 MR. WESTPHAL: That would be fine with me, I suppose.

18 THE COURT: That would work out to have them for your  
19 Birthday, 4th of July for two weeks a year in the summer, they'd  
20 be back in the home several weeks before school would start. So  
21 let's make it this year as of the 1st of August for a week, then  
22 they should be with the parents during Christmas. But how about  
23 a few days time after Christmas?

24 MR. READ: I would propose a three-day weekend following  
25 Christmas, Your Honor.

1 THE COURT: How about that? Say along about the 29th of  
2 December for say a three-day period? It's almost one day to  
3 drive down and back, with the kids for three days they only get  
4 to spend one day with them in Yakima. That's why it's a real  
5 concern if they can presently get about five days then they can  
6 spend two or three days there, they're not real tired from the  
7 long drive. It's about eight hours of driving because it's about  
8 four hours down, four hours back.

9 MR. ROBINSON: We have friends who live in Kelso. Some  
10 times we are just down for a weekend we will stop pick the kids  
11 up, stay overnight, bring them back so we don't have to drive  
12 clear to Yakima. We do have friends both in Kelso or Longview  
13 and Toledo, Washington. I used to live down there years ago.  
14 We can stay with them on the basis of one weekend, but I have to  
15 get back to my machine in a period of two or three days.

16 THE COURT: I think that is sufficient information for the  
17 court to make a decision.

18 Let's fix it for December 29, 30, 31. What time would be  
19 for a weekend say in October, something along the 27th, 28, 29th  
20 of October. Pick them up on a Saturday morning, return them on  
21 a Sunday evening. On that say nine o'clock on a Saturday morning  
22 return them by six o'clock on a Sunday evening.

23 MR. WHITLOCK: That would be acceptable. They'd like to  
24 pick them up on Friday night. Nine o'clock is really a tough  
25 time. They can't be here at nine o'clock from Yakima. They have

1 to come down the day before. They'd like to come down a day  
2 before, see them a day before.

3 THE COURT: All right. Mr. Read, on that, pick them up  
4 at five o'clock on the Friday, return them on Sunday evening at  
5 six o'clock. You can work that out with Mr. Read in regard to  
6 that situation. And then a two-day weekend in March, and then  
7 again work out a weekend that is agreeable to you people some-  
8 time in May. Let's make it May.

9 MR. WHITLOCK: I believe Mr. Read and I can work out the  
10 specific times.

11 THE COURT: Now she is the mother of the children now.  
12 Let's not do anything against the parents of the children. The  
13 grandparents, let's do everything you can towards making this the  
14 best transition at all possible for the children. See if you  
15 can't straighten out your own relationship too, you will feel a  
16 lot better if you can, and don't say anything against the other  
17 person. Build them up, don't tear them down. Let's see if we  
18 can't make this work because it sure is a lot better for the  
19 children.

20 MR. READ: We would also ask for restrictions in here,  
21 some language in the order. I think Mr. Whitlock and I can work  
22 it out to the effect that these children are part of this home,  
23 as much as possible are to be raised in accordance where visitation  
24 with home standards as far as discipline and bedtime behavior,  
25 things like that. There is uncontested testimony of problems in

1 in that regard in the past. I think language would go a long  
2 ways towards smoothing the relationship in future years.

3 THE COURT: I think so. Why don't the two of you work  
4 that out.

5 MR. READ: Mr. Whitlock and we can work that out. We  
6 understand the court's decision, we both understand our clients  
7 position.

8 THE COURT: Good luck to you all.

9 (Whereupon court adjourned at 3:45 o'clock p.m.)  
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APPROVED AS TO FORM AND NOTICE  
OF PRESENTATION WAIVED this \_\_\_\_\_

day of \_\_\_\_\_, 19 \_\_\_\_\_

Attorney for \_\_\_\_\_

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2

3

4

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

5

FOR CLARK COUNTY

6

7 HENRY ROBINSON and RUTH ROBINSON, )  
8 husband and wife, )

8

Petitioners, )

9

and )

10

JOHN WESTPHAL, )

11

Respondent. )

12

NO. 7 1 1 5 4

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

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# FINDINGS OF FACT:

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FINDINGS OF FACT AND  
CONCLUSIONS OF LAW - 1

READ, WOLFE, HANNAN & MERCER, P.S.  
ATTORNEYS AT LAW  
804 WEST EVERGREEN BOULEVARD  
POST OFFICE BOX 308  
VANCOUVER, WASHINGTON 98666  
(206) 653-4791



1           b. Two week's continuous visitation during the  
2 summer of 1979.

3           c. Visitation on the weekend of October 27 and 28,  
4 1978, from 6 PM Friday through 6 PM Sunday night.

5           d. Visitation during the Christmas holidays, 1978,  
6 on December 29, 30, and 31.

7           e. A weekend visitation, on days to be agreed upon  
8 by the parties, in March 1979.

9           f. Another weekend visitation, on a date to be agreed  
10 upon by the parties, in May 1979.

11           g. Subsequent weekend visitations shall be arranged  
12 between the parties at two to three month intervals, giving  
13 consideration to the fact that there should normally be visitation  
14 during the Christmas holiday period and a continuous period of  
15 two weeks during each subsequent summer.

16           h. It should be the Petitioner's responsibility to do  
17 the traveling in exercising visitation, or in the alternative to  
18 provide for supervised transportation for the boys.

19           3. The past relationship has led to hard feelings and  
20 strained relationships. In view of this, there should be specific  
21 rules for the conduct of visitation rights as follows:

22           a. In the exercise of visitation, the boys should be  
23 picked up at, and returned to, a neutral location, rather than  
24 the residence of the Respondent.

25           b. The Respondent shall be notified in the event  
26 Petitioners intend to take the boys on extended trips, or travel  
27 out of the State with them, while exercising visitation.

28           c. If because of a family death or other unforeseen  
29 situation visitation cannot take place as scheduled, the parties  
30 shall work to establish an appropriate substitute visitation.

31           d. While exercising visitation, the Petitioners shall  
32

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW - 2

READ, WOLFE, HANNAN & MERCER, P. S.  
ATTORNEYS AT LAW  
604 WEST EVERGREEN BOULEVARD  
VANCOUVER, WASHINGTON 98100  
(206) 643-4751

1 observe the prevailing standards of discipline and diet in the  
2 Respondent's household, which is the boys' home.

3 e. Neither party shall conduct themselves in front  
4 of the children, whether by words or behavior, or otherwise,  
5 in such a manner as to depreciate the other in the eyes of the  
6 children or to the detriment of the children's normal relationship  
7 with the other.

8 f. The parties should attempt to settle their differences  
9 and treat each other in an adult manner.

10 g. The WESTPHALS should allow telephone conversation  
11 between the children and the ROBINSONS up to twice a month at  
12 reasonable times.

13

14 ON THE FOREGOING FINDINGS OF FACT, the Court does now make  
15 the following

16 CONCLUSIONS OF LAW

17 1. The Court has jurisdiction over these parties in the  
18 subject matter of this dispute.

19 2. A Decree of Visitation Rights should be entered in  
20 accordance with the foregoing findings of fact.

21

22 DATED this \_\_\_\_\_ day of July 1978

23

24

\_\_\_\_\_  
J U D G E

25

26 Presented by:

27

\_\_\_\_\_  
Dale Read, Jr.  
Of Attorneys for Respondent

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29

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32

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW - 3

READ, WOLFE, HANNAN & MERCER, P.S.  
ATTORNEYS AT LAW  
604 WEST EVERGREEN BOULEVARD  
PO BOX 1000  
VANCOUVER, BRITISH COLUMBIA V6B 6E6  
(604) 693-4791

# Custody fight ends in court

## Grandmother, mother battle for boy

By RICHARD WAGONER

Staff writer

A 12-year-old boy has been placed in a foster home while his grandmother and mother wage a custody battle that has caught the attention of grandparents and family rights groups throughout Spokane.

At issue is who should take legal custody of Dene Bicknell — his grandmother, Rose Bicknell, or mother, Penny Senter.

Bicknell, a 51-year-old Spokane Valley resident, said she has raised the youngster since birth and wants legal custody of him.

His mother, Bicknell's daughter, disputes that fact and wants the boy back permanently.

The family dispute landed in court Tuesday as Bicknell and Senter, represented by attorneys, appeared before Court Commissioner David M. Thorn to resolve the issue.

Thorn postponed any decision on the boy's custody, and instead appointed an attorney to represent the boy and a counselor to determine which family he considers his own.

A date for a custody decision has not been set.

Representatives of family and grandparents rights organizations supporting Bicknell crowded the hallways in Superior Court but were kept out of the courtroom when Thorn closed the hearing because of the nature of the dispute.

"I love that child so much," Bicknell said prior to the hearing, fight-

ing back tears.

Bicknell said the child has lived with her, with her daughter's consent, since he was a baby. Five times she has taken the boy to live with his mother and five times he has run back to her, she said.

But when Bicknell in April asked her daughter, through the state Department of Social and Health Services, for \$15 a week to help pay the boy's growing bills, Senter refused and said she would take the boy back. Bicknell and her husband, Ray, live on Social Security and have trouble paying the child's expenses, she said.

"He doesn't want to live there. If he wanted to live there I'd take him there," Bicknell said.

But Senter's attorney, Joseph Lynch, said Senter disputes her mother's statement that the child has lived almost entirely with his grandparents.

Lynch declined to comment specifically about the disputed facts, saying, "I'm trying to prevent a public bloodletting."

"The concern is the child will be injured by this process," Lynch said, obviously concerned about media coverage of the hearing.

Senter declined to comment on the case.

The boy was placed in a foster home Sunday until the custody battle can be ironed out.

"It's the child I love so much, but the ironic thing is I love my daughter, too," Bicknell said. "I'm fighting someone I love for someone I love, too."

Rose Bicknell is a member of S.O.N.G.

(Society of Neglected Grandparents)

It is a known fact that Penny has lived with her since birth, with no attention or child support from the Mother. We are with her 100% and we ask that you write to her and give her your support. Your letters could help send Penny back to where he wants to be, home with his grandparents. In our opinion, Penny has one Mother, Rose Bicknell. He is being badly hurt by the separation from his loved ones and friends. Please take this time to write a letter of love to help our little boy go home. Write to: Rose Bicknell, 19114 E. Marietta

Otis Richards, Wash 99027

Thank you...

The loving grandparents of S.O.N.G.

Rose Bicknell  
 E. 19119 MARIETTA  
 OTIS ORCHARDS WA.  
 99027

Oct 27/1983

Lois,

I'm writing to tell you a little about myself. I am a 51 year old grandmother. I have raised my grandson Dene all his life. This is the only home he has ever known. Our home is free of alcohol and drugs. His parents home is not. We strongly believe in God and they do not. I keep my home neat and clean and they do not. Yet without seeing my home child. Protective told me my daughter's home is more fit than mine. What a slap in the face. I am Grandma to many of my neighbor children and now to 4 small children I baby sit. These people know of me and yet give me their children to watch for while they are making a living or just while they go out for the evening. They said in my home Dene is 12 going on 30. Am I wrong in letting him know about life. If he asks I tell him. If I feel he should know I tell him if he doesn't ask. In this fast pace our children are living these children need to know these things. I am talking of sex, money, life, death and etc. I had a talk with a 14 year old girl who is a neighbor of mine and she is Oregon and the whole "scene" as she calls it. I asked her why and she can't answer the questions. She is a very pretty girl to look

at but such an ugly person inside. I asked her what a "home" was to her. Her answer was quite interesting. She said it is a place where people love you and care about you and tell you this every day as often as you need to hear it. I asked her what about parents I didn't hear it come from her mouth. She said it didn't have to be parents it could be an Aunt, a sister or a Grandparent. All they need is a lot of understanding. In my home I always gave them the love and understanding. He's never run from my home but every time (7) in all I have taken him back to his mother to live. He has run back to me. The last being 2 weeks ago. Now know how to clean a home, sew on the sewing machine and to read directions to cook. Because of this I have been accused of not letting him be a child. Life is not easy for none of us. I'd would rather teach him the above than how to smoke pot or drink alcohol or any of these so called pleasures that most parents today feel they must have and do. I am a parent of 5 small children and I know there were days I wanted to give all of them away. Then at night I'd go and look at those innocent faces, asleep and feel so ashamed. Most parents today never see those precious sights as when the kids are in bed then they have their pleasure time. When we go to court we place our hand on the Bible



and swear to tell the truth. Not one in the  
 court proceedings do you hear "Gods" name  
 mentioned again. If we would all learn his  
 truth and live by it because we know it  
 is the right way and not just to impress a  
 sudge or a jury how much sadness we  
 could prevent. The best show business people  
 are in our courtrooms. I have 31 affidavits  
 from my neighbors, friends and family. They  
 all spoke the truth as they saw it. My  
 daughter had 5 and I alone proved all of  
 what they said was untrue. My daughter  
 said I was an unfit parent for one reason  
 only. I did not have any of my children  
 graduate. I feel lucky as my life and  
 home has been a good one and such a  
 feeble excuse is all she could come up with.  
 I am who I am because of my parents. I  
 feel I am a very lucky person to be  
 born to them. I have done with out for  
 my children, hurt when they hurt, cried  
 when they cried & laughed when they laughed.  
 Now I sit here and I hurt, laugh & cry  
 alone. It is so said but I believe it  
 will help me to help my self and my  
 daughter & my son who are both lost to  
 drugs & alcohol. I will not give up until  
 they are beautiful on the inside again. I  
 hope our laws will be changed so we  
 can help our children with their babies.  
 We don't want to interfere we just want to say  
 to them we understand and want to help all  
 of you. Thank you for listening. Rose Bicknell

[From Society of Neglected Grandparents]

## Letter to the Editor:

With Grandparents Day coming up soon, I want to say a few words. I went to a meeting last week, and at this meeting there was a commissioner and a man from legal services. It was a sort of question and answer session. I realize that when the questions were asked, each of these 2 men were answering & trying to tell it like it is with as much honesty as possible.

But there were people in that room that came away from there feeling totally defeated, because of a question that I asked the legal services person. I asked him: "Is there legal services available to low income grandparents to sue for the right to visitation of their grandchildren?" Answer: (and I quote) "Because of the cut backs & Reaganomics, we are considered low priority, insignificant senior citizens." (unquote)

Each of you out there, take a look at your mother & father, and at your grandparents in the category of low income. Take a very good look! Are they low priority to you? Insignificant? Does anyone know or care about the tragic pain involved in being treated unfit to associate with our precious little, or older grandchildren? With no way to have any rights to change it? No money to sue? It is one of the most helpless feelings in the world. We put in our time trying to love & be there for all of you, and come up empty!

We want our grandchildren to run up the front walk & run into our arms where they belong, we want to see the joy on their faces when we do some little thing that makes them happy. I ask all of you out there who keep us away, what harm could ever come to these children if they are with us? We don't want to hurt them with talking about family problems, we only want to love them.

I read a statement the other day, "Grandparents do not batter and abuse children, parents do." These children are extensions of ourselves, and our eternity. Who will know that we ever walked this earth without them? Without them knowing us? We could each have 20 grandchildren and not one can take the place of missing ones. Don't blame us for what your ex-mate has done, or is doing, and these people happen to be our children. We didn't divorce you, or the children. All we ask is the right to love & be loved.

I have 3 precious grandchildren missing that were the joy of my life for 7 years, now I cannot see them, or touch them or hold them, or say very important words to them - "I love you!" I know they ask about me, what are they being told? That I don't love them? I would give them the world if I could. I am not speaking just for myself, this is how we all felt when we left that meeting.

One Insignificant Senior Citizen  
Joyce Friedland, Founder of S.O.N.G.  
(Society of Neglected Grandparents)

[Rom Society of Neglected Grandparents]

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Each of you out there, take a look at your mother & father, and at your grandparents in the category of low income. Take a very good look! Are they low priority to you? Insignificant? Does anyone know or care about the tragic pain involved in being treated unfit to associate with our precious little, or older grandchildren? With no way to have any rights to change it? No money to sue? It is one of the most helpless feelings in the world. We put in our time trying to love & be there for all of you, and come up empty!

We want our grandchildren to run up the front walk & run into our arms where they belong, we want to see the joy on their faces when we do some little thing that makes them happy. I ask all of you out there who keep us away, what harm could ever come to these children if they are with us? We don't want to hurt them with talking about family problems, we only want to love them.

I read a statement the other day, "Grandparents do not batter and abuse children, parents do." These children are extensions of ourselves, and our eternity. Who will know that we ever walked this earth without them? Without them knowing us? We could each have 20 grandchildren and not one can take the place of missing ones. Don't blame us for what your ex-mate has done, or is doing, and these people happen to be our children. We didn't divorce you, or the children. All we ask is the right to love & be loved.

I have 3 precious grandchildren missing that were the joy of my life for 7 years, now I cannot see them, or touch them or hold them, or say very important words to them - "I love you!" I know they ask about me, what are they being told? That I don't love them? I would give them the world if I could. I am not speaking just for myself, this is how we all felt when we left that meeting.

One Insignificant Senior Citizen  
Joyce Friedland, Founder of S.O.N.G.

Oct. 22, 1983



W. 731 Knox  
Spokane, WA 99205

509-327-3452  
Call Anytime

To Whom it may concern:

I am the Grandmother of fifteen grandchildren. There are three that I am not allowed to see or to associate with. These three I have been the closest to. Always there to baby-sit as much as three and four times a week, and always there to do any of the things a Grandmother does to help, always there to notice if one needed a pair of shoes or something extra. And for seven years, I was an accepted part of their lives. I must explain this so each person who reads this, knows that I am speaking for many like me. I hope in writing this, to say that we are all of one heart and mind.

First, let us each ask ourselves how we allowed ourselves to get in this position? Our children are now grown, and we are so afraid to speak up for fear our children won't love us, we have lost our place in their lives. Our opinion is not heard anymore. We have been delisted by them, told to "butt" out. They have all the answers. We lived all these years, we worked and learned, with no way to pass it on. Many of our children were born with a birth defect that did not become noticeable 'til they grew up. *Closed Ears. Closed Minds.* What happens when they get in trouble? They come to us! What happens when things are going great for them? They ignore us, they forget our birthdays, Christmas, Anniversaries. But they expect us not to forget a single one of theirs! Or those of their children.

A few short years ago, we were the mainstay of this American Economy. We were the work force. We spent our money in the stores for food, clothing, household furnishings, bicycles, stereos, records, homes, cars, education, college, we were the P.T.A. members, we turned out the citizens that are now doing what we were doing. A few short years ago, we were in charge!

You people who are in positions of making the laws, senators, judges, commissioners, mayors, attorneys, big business tycoons. All of you, a few short years ago, we turned you over our knees and spanked your "posteriors" when you were out of line! We taught you right from wrong, we taught you your values. Without us you would not have accomplished what you have today.

Just what have you accomplished? Oh yes, you make a lot of money, you have position. But what is left for us? Us Grandparents that are cut off from your children? The children that are extensions of ourselves, so we can go back and re-live again, to watch them grow, and accomplish as we did you, to be a part of another tomorrow, through them. To be again needed, respected, loved, and listen-

ed to. They give us something to live for, we take pride if they have inherited our faces, our eyes, the color of our hair. We are born again.

These children are being kept away from us. We are their "roots". What is happening when they grow up? They come looking for us. Lost Mothers and Fathers and Grandparents. Will they find us? Will we still be alive? They feel betrayed because they missed knowing us. Missed all that love we could have given them.

It is time for us to get back "in charge" of our own destinies. It is time for us to speak up and demand our human rights, and the rights of our Grandchildren. Just what are we given back for a lifetime of loving, caring, and working for our loved ones?

You are telling us, you law makers, that if we can come into court and show why we feel we should have the right to visitation of our grandchildren, you will let us be heard, let us take our life savings, re-mortgage the homes we have paid for, be told that we have to be tested by a psychologist, have our background looked into, have home studies to see if we have a decent enough place to live, and then with the lowering of a judges' gavel, in most cases, take away our rights to love and be loved, plus all the money we spent years to save.

The word "custody" should be analyzed. It does not mean "ownership". Look it up. It means, "In care of". The word "custody" is an honor bestowed upon a parent putting in their hands the trust of a human life, and future. If the parent wants to live in squaller, starve the children, beat them, sexually molest them, have "live-ins", with the children seeing men come and go, leave them unattended, that's all right. They have "custody". Until, of course, someone notices what is happening, and takes the trouble to get involved and turns them in.

The children end up in protective custody, or in foster homes. What happens when us Grandparents (who they don't bother to tell) come forward and ask to take the children? To love them, and care for them? We are told we have no rights. We are told we are too old. It looks to me like the parents of these children are too young. If they give the children to us to care for, we might die. Young people can die, too. And how many Grandparents if they were given the children would make sure that if this were to happen, would provide for the children's future? More than any parent would! What are we too old for? For love and understanding? For helping a child with their homework? For teaching them values? For discipline we gave you? For teaching them the importance of growing up to be useful people? To give them pride in themselves? For teaching them good grooming, how to cook, and sew, and fix a motor?

We are the ones who have the time, and would take the time, which is very lacking in their parents. In this fast paced world, with both parents working, how much "prime time" does a child get? When parents fail and insult what "custody" is supposed to mean, we, the Grandparents, are next of kin, and should be recognized

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as such. We are a commodity, useful people. You are not making use of us. Reagan says we have to find ways to see that the government doesn't spend so much money. Did anyone ever sit down and figure out what it would save the government if one out of every 25 children were taken out of foster care and given to us to care for? We are talking about millions of dollars. Plus, with our "old fashioned" Grandparenting, the percentage of children given love and care and understanding that is very lax in their parents, we could change the children who get back at their parents by going into drugs, drinking, and early sex. We could save lives, with love. You have got this "stigma" on us and you think we are all over the hill, in our eighties. We are not.

Some of us are 38 years old up to sixty years old. We are still part of the working force of this country, many of us. Retirement age is 62, remember? Our brains are still working! Some of us are on Social Security and Disability, but our disabilities are not affecting our brains, our feelings, and our usefulness! What happens to us when we cannot see our Grandchildren?

Where do we get the money to pay the court costs? Starting at \$3,500 for a good attorney? If we raised the money, Social Security would tell us we don't need them. The category of middle-class and low income takes in at least 80 percent of us. So we just forget we ever had grandchildren because we cannot afford to go to court? Do we try anyway to raise the money, and then be told in court we cannot see or associate with our grandchildren because it is not in the "best interest of the child?" Trick words that steal our money and our grandchildren from us. The attorneys are making money off our heartbreak. Is this a form of "big business?" What does Resolution No. 40 say? That you will, at least, listen? It says you will allow us to go to court and sue for the right to love and be loved by our own flesh and blood. Who needs the government for that? We can do that now! In Washington there has been a law on the books since 1978 worded almost exactly the same way. Revised Code N. 26.09.240, look it up! What good has it done any or us?

If Resolution No. 40 passes, who will control the individual opinions of judges and attorneys across the U.S.A. in all the states, in all the courts? And how much time will pass until we are given a law that helps all Grandparents the 80 percent who cannot afford to go to court? What do we do meanwhile? Every day, every year that passes, we are further away from the children. How old will they be before we are heard again? Will they be grown? Will we be Great-Grandparents?...or Dead?

This money that we go to court and lose could put all the children through college and benefit them in many other ways. The attorneys most certainly make enough to put their children through college!

We did not cause the divorces or the situations that keep us away from our Grandchildren. Most of the reasons are the bitternesses of these people against their ex-mates that happen to be our children. Some reasons could be that we acted

like natural, loving parents and defended our own children at the time of divorce. They are using the children to carry out and act out their bitternesses! Usually the person who keeps us away caused the divorce. One day there was a marriage, and the children accepted us as a natural part of their lives, and a new day comes and they are told to stop loving us, do not speak or us, or to us, and we are stuck still paying for a divorce while both parents go off to new lives, and we are "in the way." We may not approve of new life styles, or the jeopardy they put the children in. All the giving, loving and caring we put into all of them is forgotten. They are telling us to divorce our Grandchildren because they are divorced?

This custodial parent, shall we say the Mother, wants to re-marry, she wants to make an impression on her new in-laws. She cuts us out and tells the children they have new Grandparents. This is a lie! It is physically impossible for any child to have more than two Grandmothers and two Grandfathers. Certainly true of animals! No one loves a child as much as blood kin! There are those Grandparents out there who could care less what happens to their Grandchildren, but that is their loss and I am not addressing them.

Most of the reason we are kept away is simply that they don't want us around. No one asks the children what they think. They are "pawns" and being used to satisfy the "whims" of the custodial parent. Usually, they are just enough afraid of the angry parent that they don't dare even speak or us. We are paying for the fact that they could not make their marriage work, we are paying for their stupidity. It is time for us to get back to where we were. Back to turning a few people over our knees and spank their "backsides." It is time to get back into the stream of life and be heard.

I heard a Commissioner say that the laws will not change in our lifetime. So why live? I wish to do my part in making a liar out of him. I also heard that making such drastic changes with laws for Grandparents would be too much of a "turn around." The rest of the world is turning around, why should we sit still? This is the 1980's. Haven't you heard your children say that to you? I have a totally new idea for a law for Grandparents. It is wonderful that we have so many fine groups for Grandparents Rights, hard working people all trying to help each other and accomplish good things. What we need is a "frosting" for our cake. "United Grandparents." One organization where we know every Grandparent in the U.S. and we know their story. This way we get a "head count." There is power in numbers. No one will listen to a choice few!

I have heard people say, "God will help you...pray!" Let us be logical. We need a lot more than prayers. I think God wants us to stand up and fight for our rights. "God helps those who help themselves." He gave us a brain and a heart and he expects us to use both. God says, "Honor thy Mother and thy Father." What happened to that Commandment?

This is my proposal for a law for the rights of all Grandparents, for all situations. Keeping us away from our Grandchildren is defamation of character, alienation of affections. These people

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who keep us away take for granted and "assume" that our Grandchildren will be harmed in our presence. This is an accusation and unproven. We are being accused, and with no proof at all. Just because they say it. I think it is time we forced them to prove that we are unfit Grandparents. They are against us. We are not against anything other than the terrible treatment we are getting.

The law should read: We should be able to go to an attorney at the price of approximately \$50.00 to have a letter written to the custodial parent that keeps us away, asking for the right to see and associate with our grandchildren. By law, this letter must be answered to, within a certain but short length of time. If it is a negative answer, then they would have to realize that they would have to automatically take us to court at their cost, including our attorney and our choice, of attorney. Make them pay in court and prove what they are saying against us. Just saying no is not good enough. They must prove it. How will they do that when it is all an assumption on their part? They could not know ahead of time what we will do, say or teach their children.

If this were a law, how many of them would want to go to court and spend the kind of money they don't care if we spend? How many of them would decide it is cheaper to let us have the children back? How many of them would try to raise the money they expect us to raise? Sure, they would rather we just go away, but we are not going to! They are accusing us of being unfit without proof. Let us make them prove it. Will we beat the children, sexually molest them, starve them, warp their minds? No, that is what they are doing! We have to make them answer to their "assumptions."

No more being told we have to be evaluated. More parents need that than us. No more insults to our integrity!

When, let us say, a Father gives up his child for adoption to a step-father, we didn't adopt that child out! Yet, we are told we are no longer Grandparents. When an unwed Mother adopts out her child, are we asked if we want it? No matter where it goes, we are still the Grandparents. They check us out to see if we are "fit" and she gives it away! Our blood kin! Who said "United we stand, divided we fall?" Without the backbone of family in this country we will fall! No one knows who is related to whom, and this could even end up in marriage to your own cousin, or even your own brother or sister.

Without family "roots" the American tree of life will die. We will have no ancestors, and we will end up all individuals who don't belong to anyone. This must be stopped. What can my ex-daughter-in-law say about me if she takes me to court to prove that I am not good enough to associate with my Grandchildren? What can yours say? That I wasn't good to her children? She has to swear on a bible, you know! That I am immoral (she has to prove that, too!)? I do not believe that "assumption" is permissible in any courtroom.

Why take away a child's roots? None of us could be as bad as these hundreds and thousands of parents that let their children end up in foster homes by their neglect. Mothers that take support money from a Father and then try to keep him away. She is in contempt and getting away with it. Who ever said just because you are a Mother you are right? They make mistakes, just like we did. A Father must be made to feel welcome so his children know he loves them, not just any man the Mother "shacks" with or marries. The real Father...the person the child looks like. *Blood Kin.*

The Mother tells the child your father is no good if he is out of work or not supporting them. How did love turn into dollars? If a child is told their Father has no worth, then they feel they don't either. When he stays away they feel they have done something wrong. Too many parents are putting grown-up burdens on little children. They are four years going on twenty! Let them just be children, be loved, and be happy. They will have our burdens soon enough! These children are being taught that Grandparents, older people are bad people. Will they teach their children the same? You Grandparents with this neartbreak out there. We are the only ones that can make a change. You law makers, you can't make laws for us, unless you ask us what we want. We can still hold a pencil and make our "mark" in voting for you. We don't want any more "trick" words.

If a law is written, it should mean what the words say. Not a dozen different ways to change the words to fit each situation. Exactly what it says. Word for word. At this time in our lives we should have peace, dignity, respect, not all this pain and insult. We know what "parent" means. Look up and see what "Grand" means. You will find it means "Worthy of Exalted Respect." In raising all of you we gave up what we wanted, to make sure you would have more than we had, we gave you better lives. We worked hard for you. What are you giving us to live out the rest of our lives with? Leaving us alone, keeping your children from us, making us feel that our lives were for nothing! Every human being needs to be needed, needs to love and be loved. Did you forget that we still fall into that category? Do you keep us away because we were once young and made mistakes and you are punishing us? I say again that keeping us away is "defamation of character" and it is against the law to make such an accusation without proving it. If they hate us so much, they will be happy to take us to court and get rid of us once and for all (if they can.).

Can you see it in print? "*Ex-daughter-in-law takes Grandparents to court to prove them unfit Grandparents?*" How would the public answer to that one? "*Grandmother is told in court that her association with her Grandchildren would corrupt their lives.*" None of my children ever were in any foster home or in protective custody! None of my children were ever in jail, or on drugs! How about yours? Ms custodial Mother?

You Grandparents, don't just sit there and take this kind of abuse and expect a choice few of us to mend your fences. Stand up and be heard! We need you all. How much do you love your Grandchildren? How badly do you want them back? If

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we sit there and let this happen, then we are showing the world that we are senile, insignificant, useless people. If we do not come out in a large body, we will get just what we have coming: nothing. We got ourselves in this position by not speaking up in the past, like I said in the first part of this, being afraid if we spoke our piece our children would walk away and leave us alone. Isn't that what we have allowed them to do? I'm alone, how about you? Do your children worry about you? Do they ask you if you need anything? Do they care if you have food, clothing and your rent is paid? Do they help you if you are ill? Do they care if you are cold in winter? And here we sit still caring about all these things about them! (And most certainly, our Grandchildren!) This "stigma" that society has put on us can only be removed by us. If you are a Grandparent, you are a senior citizen and if you are a senior citizen, you are elderly, and if you are elderly, you are old and useless, just taking up space. We put ourselves in this position!

We forgot to speak up, and we kept what we thought to ourselves and we didn't make them listen. Remember your Mother and your Grandmother (and the Grandfathers and Fathers) bragging about how many Grandchildren and Great-grandchildren they had? We won't be able to brag, we are kept away, no one will tell us, and we won't even know where the children are! How many of you out there, when you want a name or address of a relative do you ask your Mom and Dad? They keep track of everyone, all the relatives, your Aunts, Uncles, and Cousins.

Who will these lost children ask? They are told we are lepers of some same sort. Untouchables. Does this mean that one whole side of their family is also untouchable? A whole lost family! Like the words to a song, "We are Family." We are the mainstay of the American Family! We are an American Commodity, going to waste.

It does not matter whether we live in a fancy house or not. "Love" is a house of its own. Stop going to court, stop letting these people insult us. It is undignified. Stop letting them take our money that we meant for our "old age." Let us make sure that Grandparents have some rights by joining hands across the U.S. in one, large body of people. They will hear us then! Each and every person who cares to write to me, I will answer. Tell your stories. Public awareness can help. Let us print our stories and name names. No one can hurt me any more than they already have, you either, so speak up! Don't sit there and take it. Let us become a power that will be heard for all the children out there we love.

We have come down to this, and just see how this sounds to you. We are groveling in the dirt asking for crumbs, going to court and begging for the right to love our own people. We are taking insults and paying big dollars for it. And we are walking away with no more than we had before when we lose, and in debt, to boot! We must have laws written for us, laws we write. We must be heard!

I am 59 years old. I am far from senile, and as far as I feel about myself my intelligence far exceeds the ex-daughter-in-law that keeps me

away. I am not useless, I am valuable to all who know me, and I know I can better the lives of any and all of my Grandchildren by my presence in their lives. Sometimes they won't listen to their parents, and they will listen to us. We have a love they are sure of. We can save lives and futures by just being there.

Do you feel about yourself the way I feel about me? Then do something about it! Join hands with us. Stand up and be counted! We only go around once!

We are left with empty chairs at Thanksgiving, and the anticipation of happy children and laughing voices at Christmas. All we have left is memories of yesterday. No description of the emptiness of loneliness could ever be better expressed than this!

*Joyce Friedland*

With all my love,

Joyce Friedland, Founder of S.O.N.G.  
(Society of Neglected Grandparents, Inc.)  
731 W. Knox, Spokane 99205 509-327-3452

Dues: \$20.00 a year. Monthly newsletters sent to all members. All letters received answered immediately. Enclose S.A.S.E. Join us!

P.S. We advise every couple that intends to divorce to write into the divorce visitation rights for all four Grandparents, even if the present situation is on the best of terms. Tomorrow it may not be! Ask you children to protect you! Keep a "S.O.N.G." in your heart! (In my essay I mention the "Stigma" that is put on us. This poem pretty well describes what I mean.)

## The Quandary of Growing Old

Just a line to say I'm living  
That I'm not among the dead,  
Tho' I'm getting more forgetful  
And more mixed up in my head.

For sometimes I can't remember when  
I stand at the foot of the stairs  
If I must go up for something,  
Or if I just came down from there

And before the refrigerator so often  
My poor mind is filled with doubt:  
Have I just put food away  
Or have I come to take some out

And there are times when it is dark out  
With my night cap on my head,  
I don't know if I'm retiring  
Or just getting out or bed?

So, if it's my turn to write,  
There's no need in getting sore  
I may think that I have written  
And don't want to be a bore.

So remember, I do love you  
And I do wish you were here.  
But now it's nearly mail time.  
So I must say, "Good bye," my dear.

There I stood beside the mail box  
With a face so very red,  
Instead of mailing you my letter  
I had opened it instead.

Senator EAST. Thank you, Mrs. Teverbaugh. I am deeply moved by what you and the other witnesses have said, and, when we have concluded with all the witnesses, I would like to make a few general observations of my own on the common themes that run through all of your comments this morning.

I would like now to welcome Mr. and Mrs. Martin M. Highto of Baltimore, Md. I want you to know that Senator Sarbanes wished to personally welcome you.

Officer, did he leave then?

OFFICER. Yes, sir.

Senator EAST. Senator Sarbanes did leave. I saw him duck his head in and I knew he had wanted to come and make a statement about the presence of Mr. and Mrs. Martin G. Highto. For some reason—perhaps, he felt he would unduly interfere with our proceedings—and was unable to stay.

Mr. HIGHTO. That's nice to know, Senator.

Senator EAST. So, in any case, you can thank your Senator for having made the effort.

Mr. HIGHTO. Thank you.

Senator EAST. You're welcome, and if you will please make your statement.

#### STATEMENT OF MARTIN G. AND GERRIE HIGHTO

Mr. HIGHTO. Thank you. Honorable Chairman, we are Mr. and Mrs. Highto, and we reside in Baltimore, Md. We are here to testify regarding the areas of domestic human relations concerning the increase in child abduction and the issue of visitation rights for grandparents.

The issue of grandparents' rights to visit with their grandchildren is one issue that, until recently, has been totally neglected. With the divorce rates exceeding 50 percent and where grandchildren are involved, some grandparents are completely and totally ignored. Unfortunately, we know too many grandparents who are in this position today simply because of the hostilities between the divorcing couple who use the children as pawns, in an effort to get even with each other. This issue exists also among grandparents whose natural children, whether they be divorced or not, become angry with their own parents and they, too, will spitefully withhold the children from seeing their grandparents. Another situation which involves grandparents, and this happens quite often, is the untimely death or disappearance of a noncustodial parent. When this happens, the custodial parent may, for whatever reason, withhold the children from seeing their grandparents who have absolutely no rights whatsoever, completely destroying the poor grandparents.

Churches, synagogues, schools, family and children's services are keenly aware of the unique relationship between grandchildren and grandparents and are trying desperately to involve them in everyday activities. Our grandson's school initiated, for the first time, a grandparents day. The faculty was completely overwhelmed by the grandparents who came out in droves, far exceeding their wildest expectations. Grandparents came from as far away as California. It was a marvelous day.



We have found that whichever parent has assumed custody, in many cases, the noncustodial parents and immediate family are often given a most difficult time. Unless you have experienced this personally or if it happens to one's family, you cannot possibly know the heartache and frustrations caused by the cruelty, hatred, and vengeance manifested against grandparents by some custodial parents. It is unbelievable. This became an issue with us almost as a preventative one, while our daughter was going through a divorce. Also, very close friends of ours—would you believe they hid themselves in bushes and foliage near their granddaughter's school just so they could see her? They were not only forbidden to visit her, they could not even speak to her.

Mrs. HIGHTO. And I am Mrs. Highto, otherwise known as Grandma Gerrie, according to the press. But my involvement began when I read a newspaper article on the subject which was very apropos. I immediately called the Maryland State Legislature in Annapolis in an effort to find what laws, if any, the State of Maryland had regarding grandparents' visitation rights. To my utter dismay and astonishment, I found there was absolutely nothing on the books relating to this situation. I did learn that the Honorable State Senator Rosalie Abrams, who was the majority leader at that time, had been sponsoring a grandparents bill since 1975. This was 1980. The senate had been rejecting this bill as having no importance. I then spoke to Senator Abrams and offered her my assistance. With the aid of my husband, family, and friends, we took to street corners and shopping malls. We proceeded to get petitions on a statewide basis, which I must admit was a very difficult job, especially as a daily routine. Fortunately, when people realized what was involved, they not only stood and waited to sign, but offered help of all kinds. Whenever we collected a few hundred signatures, they were Xeroxed and we hand-delivered them to every delegate and senator in the Maryland Legislature. This went on for months until almost the end of the legislative session.

Still the State of Maryland had no laws which gave grandparents any legal or moral rights and absolutely no recourse should the custodial parent refuse to allow them to see or even speak to their grandchildren. I assure you that you cannot imagine what a devastating effect this has on a young child, especially if the child has had a close, loving relationship with his or her grandparents. What does a 5-year-old child think when he is suddenly cut off, as you sever an umbilical cord, from the most unselfish love he will ever know? I can tell you of two of the most difficult and heartrending remarks. How would you feel if your grandchild looked up at you and said "Grandma, why can't I sleep at your house anymore?" What can you say to this loving child who has spent practically half of his short life in your house? Then after a difficult time of trying to answer, he bursts into tears and yells "Nobody cares about me!" Is it not traumatic enough for a young child to be separated from one of his parents without shocking him further by alienating him from the unselfish love of his grandparents whom he has loved since he can remember? The frustrations of grandparents are totally overshadowed by the terrible injustices being done to children all over this country.

We almost faced this tragedy along with countless other grandparents and their grandchildren, who really need each other. Fortunately, because of our staying power and with the aid of the Honorable Senator Abrams, the Maryland State Legislature passed Senate bill No. 333 granting grandparents the right to petition the courts for visitation rights. Then on December 16, 1982, I was requested to appear before the Select Committee on Aging in the U.S. House of Representatives, chaired by Congressman Mario Biaggi of the State of New York, who shortly thereafter successfully guided this piece of legislation through the House. This bill does not give grandparents the right to visitation. It gives us the right to petition the courts for such. But it still remains the jurisdiction of the presiding judge as to whether they be granted or not.

Now, frankly, I think this is not quite the way it should be. I think that a committee should be set up—you can't go in cold and have a judge coldly take the word of one against the other. There should be an evaluation committee. And as of now almost 50 States have some type of law regarding grandparents' visitation rights. Unfortunately, most States will not reciprocate with one another when a custodial parent decides to cross State lines.

This is the main reason for a uniform Federal law that would give guidelines to all 50 States. The States would administer these uniform laws and we hope this would reduce and perhaps eliminate child abductions and State-hopping by custodial parents who would circumvent the laws of the original State.

As a rule, grandparents are the last people who want to see their children divorced and a family torn apart. A uniform Federal law would give us our legal and moral rights to love and relate to our grandchildren. We wish to produce a generation of children who will know their roots and obtain some stability. We provide a support system and another means of identification when such a trauma occurs. We, as grandparents, give the gift of self-worth. The gift of caring, the important gift of heritage, the gift of special memories, the gift of sharing experiences, and last but by no means least the gift of love and acceptance. A child needs a sense of continuity and we are continually there to buffer him against adversity. Let us not forget that we are their roots and do what we can to protect them. Remember, for whatever reason a marriage terminates, there is no such thing as an exgrandparent.

Please keep one thing in mind. We have chosen you as our law-makers and we live by the laws you pass. In a sense we are your suppliants and you are our conscience. We are not radicals. We do not advocate radical law changes. We are human beings in the twilight of our years, seeking what little happiness we can garner from our grandchildren.

We have already asked God for his help, now we ask you for yours. Remember, where would we be if it were not for our own grandparents? There is no love that can replace the very special love of the grandchild and the grandparent and how sad it is for the grandchild who never knew or does not remember his grandparents.

Thank you.

Senator EAST. Thank you, Mr. and Mrs. Highto. I feel both of you have contributed a very moving and touching statement on the



extent and significance of the problem. I wish to thank you on behalf of the subcommittee for your willingness to come and be a part of this discussion.

I would now like to turn to Mr. Richard Victor, who is an attorney at law from Birmingham, Mich.

Mr. Victor, we appreciate your coming and welcome you here this morning.

#### STATEMENT OF RICHARD S. VICTOR

Mr. VICTOR. Thank you very much, Senator East. As chairman of the subcommittee, I wish to thank you for an opportunity to be heard this morning.

Senator East, this matter is a matter dealing with the American family. I cannot express that deeply enough. I have in the last 4 years spent a great deal of my practice in the area of family law, representing grandparents who have been, for one reason or another, deprived and denied the right and ability to visit with their grandchildren.

One of the foundations that we had to do in the State of Michigan was to provide adequate and good laws so that the citizens in the State of Michigan would have an opportunity for, No. 1, standing, and No. 2, the right to come before a court and ask for visitation if that visitation has been denied.

As a safeguard to the legislation, we have the concept of whatever is in the best interests of the children would control, so that not all grandparents—in many instances, grandparents should not—would have the right to come in and see their grandchildren.

But all grandparents at least would have the opportunity to at least ask for that right, and, if it is in the best interests of the children, be granted.

We are not here today asking for the Federal Government to dictate to the States what to do. What we are here for today, through the model legislation, model act that has been presented to the Senate for this committee to look at, for legislation to provide proper laws, properly drafted, concise statements of a national problem; to recognize this national problem; and then to present it to the States at their option whether to accept it and adopt it or not. We are not forcing any State to do it.

What are we doing? Well, first of all, I break it down into two categories, the need for the law, and, second, the need for uniform conformity, reciprocal laws through the National Commission that the legislation provides.

The grandparents' stories that you have heard today, and grandparents' stories that I could relate to you from 4 years of practicing in this area, would provide for you, Senator, and for other Members of this Senate, a chance to see that a deprivation of a chance to see your grandchild could happen to anyone. It crosses all boundaries. You may have good control, usually, over the relationship that you have with your own family and your own child, but when there has been a marriage—and there may be problems with a son-in-law or a daughter-in-law that maybe you had no control over someone who dislikes you for nothing that you did, but maybe because of the person that you are and they are jealous or they

have their own problems psychologically, they can deny you, under facts and circumstances that we have seen in America today, the opportunity of seeing your grandchildren. They have amputated your grandchildren from you—and it's wrong; it's wrong from the psychological stance, as we have heard testimony today, and it's wrong from the traditional sense of America, and the feelings of the family in America, which is our foundation.

Grandchildren who are denied seeing their grandparents as adolescents are deprived of the shared memories which last a lifetime, and once those are denied, they are denied forever. This is a form of emotional abuse and deprivation that takes place on the part of children; in America today.

What image of the family will we leave for these children? We teach our children not by what we say, but by what we do. It is an epidemic with respect to the divorce rate in this country. I don't know where it is going, but I do know that we need to do something about it. We can't stop people from getting divorced, that's a fact, but what we can do is recognize that for every two marriages one is ending in divorce now, and we have a need for children that we must instill in them concepts of the American family; we must let children know that because their parents' marriage ended whether it be via a death or a divorce, the children will not be deprived of the foundation of family. And it is not necessary to go back and take a look at our history in America to know that the principles of family, the principles of sitting around the fireplace on a Christmas evening, the principles that we teach our children in the family setting, are the principles that this country has its foundation from, and the principles that we will instill in all citizens in the United States as a necessity for them in growing up.

Now, how can we do this through the model act that is before the Senate? It is a strongly emotional issue, as the Senate and I am sure you know yourself. But what are we doing here?

Well, first, through an analysis of all the 50 State laws that I have checked and that I have researched before coming here today, I realize that there is total confusion and hodge-podge in the state legislatures and in the legislation that is there.

Now, I am not saying that I am better than the legislators in the 50 States nor the Members of the Senate here are better than those people, to tell them what they should do. But I think there is a cry in the States for help. They are not all specialists in domestic relations—and I am not saying that I am the specialist in domestic relations. But if a model act is drafted that incorporates the situations of death, divorce, legal separation, and this new concept of step-parent adoption—and that model act is then presented to the legislatures, to say that this is a model act after a lot of thinking and a lot of input from the different States, we have found to be successful in reuniting families in America, and it is here for your consideration now—that they will appreciate it, that they will say thank you. And if they choose not to adopt it, it is their choice.

But we will give it to them, we will give it to the children of those States and the families of America. In Michigan, if I may just take as an illustration of a problem that we had in trying to formulate this law—before 1971 there were no laws with respect to grandparents and rights of visitation if they had been denied. In

1971 a law was enacted that limited the right of grandparents to situation where there was a death of their own child. What happened, then, in 1979 is a situation occurred where a grandmother's daughter died. She didn't have the best relationship with her former son-in-law—unfortunately, we all can't have that in a family in an emotional setting—but she was very close with her granddaughter and her own daughter. Following her daughter's death, the son-in-law remarried; the son-in-law's new wife, their stepmother, then adopted the child. Well, now we have a legal problem: Who is the maternal grandmother of the child, the adopted mother's mother or the biological mother? We had no concept of distinguishing stepparent adoptions from at-birth adoptions, because we didn't think of it before.

Well, it's a reality now; with so many divorces ending young parents' lives, we must now consider the new family of the 1980's and 1990's, and not take the family and say because you had a trauma, forget you. We must now deal with laws so that we can protect that family as best we can.

So in Michigan we had to go to work and change the laws. But it was very confusing; it was a very difficult issue to understand and accept; there was no question that the legislature felt that grandparents should have rights, but how do we draft it, where do we put it? In 1980 they made two amendments, but they were put in sections of law with prerequisites of child custody disputes. Now they put grandparents as parties in divorce cases. That is not what they intended; they wanted grandparents to have a right to come into court and ask for visitation; if that visitation was denied on the basis of the best interests of the children, then so be it. But otherwise let them have standing and the right to be heard.

Finally, in December 1982, the law was enacted, passed, and signed by the Governor. Now we have laws that cover this area. It took us 12 years to figure out how to do it.

What this model act has done is it has put together the problems that we have experienced in Michigan and all the 50—there are 47 States that have laws; that means that 47 States have said somewhere along the line that grandparents do have rights. But we are helping those 47 States with a model act that will set out all of the things that the experiences of the different States have shown, and we are asking them now to utilize this for the benefit of their own citizens, if they choose to. If they choose not to, no one will force them.

It is clear and concise laws that this model act that we are asking the National Conference to provide, and these laws will hopefully be enacted throughout the United States, if it is the choice of the States to do so.

This will aid the States in bringing about the rekindling of the American family, the American family whose principles are the foundation which this great country has existed toward and has used as its basis for freedom.

I strongly request this subcommittee seriously consider the necessity of this legislation. If I may close with reading a very short poem that was written by a grandniece of an 83-year-old grandfather who recently recited it on a television program that I was on, and it brought tears to all of our eyes:

"Grandpa, can I see you?  
"Could you take me to the fair?  
"Would you read me a little story  
"And tell me that you care?  
"Grandpa, would you walk with me  
"Or hold me on your knee?  
"I wish that I could talk to you.  
"Grandpa, why can't it be?  
"Grandpa, do you love me?  
"Yes, I love you, too.  
"I dream of us together.  
"Do dreams ever come true?  
"Grandpa, I keep praying  
"We will be laughing very soon,  
"And some day we will be singing  
"A simple little tune.  
"Grandpa, can I see you?  
"I know this isn't fair.  
"But things will soon be changing  
"And we can be a pair.  
"Grandpa, we will be together,  
"Just wait a little while.  
"Grandpa, don't stop trying,  
"I want to see you smile."

I can't say it any better.

[The following was received for the record:]



## PREPARED STATEMENT OF RICHARD S. VICTOR

## SUMMARY

As a result of continued population growth, especially our "baby boom of the 40's," the 1980's and the 1990's will provide our society with a greater number of grandparents than we have known in our recent past. Add to this fact that the divorce rate in our country is staggering, with estimates of almost one divorce for every two marriages. In addition, these divorces are occurring between young parents who have young children, facilitating a trend in our society which can create conflicts which were unimaginable in past decades. Whether the legislative involvement should be on a state-to-state basis, strictly federal, or a combination of both, is a question which needs to be answered at this time.

Grandparents across our nation have been standing up and speaking out when they have been denied the opportunity to visit with their grandchildren. This has taken place in the formation of various support groups on a state and national level, as well as numerous court cases which have been pursued to enforce rights of grandparents to be able to visit with their grandchildren. Grandparents' rights to visitation is only one-half of the subject. The converse deals with the rights of grandchildren to be able to visit with, communicate with and maintain contact with their grandparents. This should be of significance to the legislative bodies which pass laws to protect segments of our population who are not able to protect themselves as well as to pass laws which provide remedies where injustices have occurred.

Through my work as an attorney in private practice, I have had numerous dealings with grandparents who have been denied the right to visit with their grandchildren. Because of these denials, grandparents were forced to seek court intervention to enforce rights which they thought were their rights inherently. Unfortunately, the rights which they have, if any, are statutory in nature. This means that the rights exist only if state laws were passed giving them rights.

Public attention has been drawn to this issue because of the deep emotions and the equities that are involved. Examples of cases which I have handled and which I believe will show a definite need for legislative involvement are as follows:

1. Husband and wife, following marital difficulties, have a divorce action filed and pending. Prior to a divorce judgment being entered, husband commits suicide, leaving a three-year old child of the parties. Husband's parents (grandparents) have maintained a close relationship with their three-year old grandson and continue that relationship following the untimely



death of their son. While wife is beginning her new life, grandparents have additional involvement with their grandchild, and in fact take care of him while wife begins employment. Wife meets a man and they subsequently marry. Man (stepparent) adopts child. Stepparent is now the legal father of said child. Query: Who are the paternal grandparents of that child?

Grandparents are told, "You can no longer visit or see grandchild again." What are their rights?

2. Wife, following marital problems with her husband, leaves husband along with their six-month old daughter. While driving, following her departure, she is involved in a fatal automobile accident wherein she is killed. The six-month old child survives. Wife's parents (maternal grandparents) take care of infant grandchild until father of the child remarries. Remarried father and stepmother then have the child live with them. Grandparents continue to see the child, but following the wishes of the father and stepmother, do not tell the child that they are her grandparents. Stepmother of child adopts the child and raises the child never telling her that she was not the natural mother of the child. After several years, the father and stepmother of the child tell grandparents they can no longer see their granddaughter again.

Grandparents never tell the grandchild who they really are, following the wishes of the parent. However, they are unwilling to forfeit all contact with their grandchild. What rights do they have?

3. Husband and wife are divorced, following divorce husband is given custody of the one minor child. Husband has psychological problems which hinder his ability to continue custody of the minor child, and in fact while he legally has custody said minor child resides with the paternal grandparents who properly raise and nurture the child. Wife files for a change of custody, following her remarriage, which is granted. Paternal grandparents never contested the change of custody and were in agreement with the wife having legal custody, as they acknowledged the psychological problems which affected their son. Subsequent to wife regaining custody, and for no apparent reason, she completely denies the paternal grandparents any visitation with the minor child. No allegation is ever made that the paternal grandparents are in any way unfit, or would be harmful to the minor child. What are their rights?
4. Unwed mother gives birth. Maternal grandparents are extensively involved in helping raise the child. Putative father of the child acknowledges paternity and seeks custody of the minor child. Mother of the child does

not want custody of the child and does not contest father's petition. Maternal grandparents of the child want to be able to assure visitation with the child once custody is granted to the acknowledged natural and now legal father of the child. What rights do they have?

5. Husband and wife have one minor daughter. Husband dies and wife maintains custody of minor child. Because of emotional and psychological problems which the mother of the child is suffering, she sends the minor child to her mother's home (maternal grandmother) to live with the maternal grandparents for a period of time. The child resides with the maternal grandparents, is raised by them for a period of time and does well. Subsequently thereafter, the mother of the child decides she wants her minor child back and refuses the maternal grandparents to have any contact with the minor child, including visitation. Maternal grandparents are worried because of the history of emotional problems which the mother of the child has suffered and not only refuse to give up their contacts with their minor grandchild, but worry for his safety as well. What legal rights do they have?

Some of these cases are still pending and awaiting evidentiary hearings dealing with what is in the best interests of the minor child. Others have been disposed of through either court rulings or voluntary dismissals following the intervention of psychiatrists, psychologists, social workers, or other professionals trained in the behavioral sciences who have helped reconcile families following disputes. Unfortunately, in most of the cases where professionals in the behavioral sciences have intervened, their intervention was only agreed to by the legal custodian or parent(s) because of the threat of court litigation. The incentive for the legal custodian of the minor children to attempt counseling or a voluntary reconciliation of the emotional traumas involved was their knowledge that the grandparents involved had the ability to seek court enforcement pursuant to legislative enactments. Without those legislative enactments, without just and proper laws available, there would be no incentive. Thus, the fact that legislation is created will not of and by itself create additional burdens on our courts. In fact, they create incentives for parties to reconcile and to correct wrongs which may have been committed. The court enforcement and application of legislation would be utilized as a last resort to correct injustices.

In no case do I believe that grandparental visitation is an absolute. Not all grandparents should be able to visit with their grandchildren. There may be many instances where in fact it would be detrimental to a child to be subjected to visitation with his or her grandparents given the proper factual setting. However, these decisions must be made on a case by

case basis with one underlying theme or factor; and that is, THAT THE BEST INTERESTS OF THE CHILD SHOULD CONTROL.

There is no question that the problems relating to the rights of grandparents to visit with their grandchildren is a real concern to a great number of people in our country. This concern is one which shall surely grow because of the amount of divorce in our country. We must concern ourselves with the concept of the "extended family" which includes grandparents, stepparents, and other third parties from the traditional family unit. Further, grandparents "as seniors" of our society shall have a greater impact as their numbers increase. "Grandma" and "grandpa," just as grandson and granddaughter, have inherent rights in our family unit. They are necessary to pass on the heritage of the past. They are a link in the long chain of continued growth and expansion of our society. They should no longer be ignored!

Psychiatrists, psychologists, and social workers can tell us of the importance that grandparents can have on grandchildren. Students of history note how different civilizations treat their older generations. It would seem logical that "seniors" can help us learn from our mistakes and teach us traditions and cultures which can be utilized and passed on in the future. Lastly, and it is something that I remind the litigants who are involved in cases where I fight in court for grandparent visitation, and that the parents who are standing in the way of allowing their children to contact, communicate, and share with their grandparents, may one day be grandparents themselves. How do they want their child to remember their own actions. We teach our children not by what we say, but rather by what we do. It is now time to do what must be done and to recognize the rights and responsibilities that we all face in the most basic structure that God ever created -- the family.

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STATEMENT

1. How and Why This Issue Has Gathered National Attention And The Need For State Statutes.

Whenever portions of our society are members of a class which are susceptible to arbitrary decisions, animosity, and/or loss of rights, members of that class usually find a way to draw attention to their alleged injustices. Hopefully, our society understands and accepts this principle and attempts to cure injustices once they are known.

As a result of continued population growth, especially our "baby boom of the 40's," the 1980's and 1990's will provide our society with a greater number of grandparents than we have known in our past. Add to this fact that the divorce rate in

our country is staggering with estimates of almost one divorce for every two marriage, and in addition, these divorces are occurring between young parents who have young children, we can see that this trend in our society can create conflicts which were unimaginable in past decades. Some of these conflicts need legislative involvement in order to cure injustices which might occur. Whether the legislative involvement which is necessary should be on a state-to-state basis, strictly Federal, or a combination of both, is a question which needs to be answered at this time.

Grandparents across our nation have been standing up and speaking out when they have been denied the opportunity to visit with their grandchildren for no apparent reasons. This has taken place in the form of the formation of various support groups on a state and national level, as well as numerous court cases which have been pursued to enforce inherent rights of grandparents to be able to visit with their grandchildren. The title of this subject "grandparents' rights to visitation" is only one-half of the subject. The converse deals with the rights of grandchildren to be able to visit with, communicate, and maintain contact with their grandparents. This, I believe, should be the crux of our investigation. This should be of significance to the legislative bodies which pass laws to protect segments of our population who are not able to protect themselves as well as to pass laws which provide remedies where injustices have occurred. To quote Arthur Kornhaver, M.D. and Kenneth L. Woodward: "The grandparent and grandchild relationship is a vital connection."

Through my work as an attorney in private practice in the State of Michigan, I have had numerous dealings with grandparents who have been denied the right to visit with their grandchildren. Because of these denials, these grandparents were forced to seek court intervention to enforce rights which these grandparents felt were their rights inherently. Unfortunately, the rights which they have, if any, are statutory in nature. Therefore, my clients have been limited to what was set forth by state statute in the State of Michigan and the appellate decisions which interpret those statutes, and

have only been able to be successful in receiving court intervention when legislation was provided by the state recognizing this issue.

Through our extensive research we have found various state statutes which deal with this topic and which will be discussed later in this testimony. Several of these state statutes have conflicts within the statutes themselves which has caused a great deal of confusion when they are interpreted by the courts. These conflicts arise in cases where there have been divorces or separations in families, death of a parent leaving surviving parents (grandparents) and minor children (grandchildren); children born to parents who were not married, or where questions of where a child should reside (between a parent and a grandparent) were submitted to a court. In all of these cases, grandparents, whether maternal or paternal, were involved and wanted contact with their grandchildren. In very few cases have we dealt with grandparents fighting for custody of their grandchildren over a natural parent. The cases that we have primarily dealt with are of such a nature that grandparents only wanted to continue a relationship with their grandchildren that had been established and they wished to continue, but had been terminated arbitrarily by the legal custodian (usually the parent or parents) of the child.

Public attention has been drawn to this issue because of the deep emotions and the equities that are involved. I shall address, by way of factual scenarios, cases which I have handled and which I believe will show a definite need for legislative involvement.

2. The Nature of My Clients, The Themes That Run Through Their Cases, And The Rationale Used To Render Disposition.

The Client Scenarios:

1. Husband and wife, following marital difficulties, have a divorce action filed and pending. Prior to a divorce judgment being entered, husband commits suicide, leaving a three-year old child of the parties. Husband's parents (grandparents) have maintained a close relationship with their three-year old grandson and continue



that relationship following the untimely death of their son. While wife is beginning her new life, grandparents have additional involvement with their grandchild, and in fact take care of him while wife begins employment.

- Wife meets a man and they subsequently marry. Man (stepparent) adopts child. Stepparent is now the legal father of said child. Query: Who are the paternal grandparents of that child?

Grandparents are told, "You can no longer visit or see grandchild again." What are their rights?

2. Wife, following marital problems with her husband, leaves husband along with their six-month old daughter. While driving, following her departure, she is involved in a fatal automobile accident wherein she is killed. The six-month old child survives. Wife's parents (maternal grandparents) take care of infant grandchild until father of the child remarries. Remarried father and stepmother then have the child live with them. Grandparents continue to see the child, but following the wishes of the father and stepmother, do not tell the child that they are her grandparents. Stepmother of child adopts the child and raises the child never telling her that she was not the natural mother of the child. After several years, the father and stepmother of the child tell grandparents they can no longer see their granddaughter again.

Grandparents never tell the grandchild who they really are, following the wishes of the parent. However, they are unwilling to forfeit all contact with their grandchild. What rights do they have?

3. Husband and wife are divorced, following divorce husband is given custody of the one minor child. Husband has psychological problems which hinder his ability to continue custody of the minor child, and in fact while he legally has custody said minor child resides with the paternal grandparents who properly raise and nurture the child. Wife files for a change of custody, following her remarriage, which is granted. Paternal grandparents never contested the change of custody and were in agreement with the wife having legal custody, as they acknowledged the psychological problems which affected their son. Subsequent to wife regaining custody, and for no apparent reason, she completely denies the paternal grandparents any visitation with the minor child. No allegation is ever made that the paternal grandparents are in any way unfit, or would be harmful to the minor child. What are their rights?
4. Unwed mother gives birth. Maternal grandparents are extensively involved in helping raise the child. Putative father of the child acknowledges paternity and seeks custody

of the minor child. Mother of the child does not want custody of the child and does not contest father's petition. Maternal grandparents of the child want to be able to assure visitation with the child once custody is granted to the acknowledged natural and now legal father of the child. What rights do they have?

5. Husband and wife have one minor daughter. Husband dies and wife maintains custody of minor child. Because of emotional and psychological problems which the mother of the child is suffering, she sends the minor child to her mother's home (maternal grandmother) to live with the maternal grandparents for a period of time. The child resides with the maternal grandparents, is raised by them for a period of time and does well. Subsequently thereafter, the mother of the child decides she wants her minor child back and refuses the maternal grandparents to have any contact with the minor child, including visitation. Maternal grandparents are worried because of the history of emotional problems which the mother of the child has suffered and not only refuse to give up their contacts with their minor grandchild, but worry for his safety as well. What legal rights do they have?

The above five factual scenarios are real. They represent only a small segment of cases which I have litigated over the past few years. Some of these cases are still pending and awaiting evidentiary hearings dealing with what is in the best interests of the minor child. Others have been disposed of through either court rulings or voluntary dismissals following the intervention of psychiatrists, psychologists, social workers, or other professionals trained in the behavioral sciences who have helped reconcile families following disputes as I have set forth above. Unfortunately, in most of the cases where professionals in the behavioral sciences have intervened, their intervention was only agreed to by the legal custodian or parent (s) because of the threat of court litigation. The incentive for legal custodian of the minor children to attempt counseling or a voluntary reconciliation of the emotional traumas involved was their knowledge that the grandparents involved had the ability to seek court enforcement pursuant to legislative enactments. Without those legislative enactments, without just and proper laws available, there would be no incentive. Thus the fact that legislation is created will not of and by itself create additional

burdens on our courts. In fact, they conversely create incentives for parties to reconcile and to correct wrongs or injustices which may have been committed. The court enforcement and application of legislation (both state and Federal) would be utilized as a last resort to correct injustices.

In reviewing the five factual scenarios I have presented, the following themes can be found:

1. Where there is a death of a parent who leaves a minor child and grandparents of the minor child surviving;
2. Following a divorce and custody dispute wherein custody of the minor child or children are placed with the former daughter or son-in-law of the grandparents of the child;
3. Grandparents of a minor child born out of wedlock;
4. A parent of an adult child who has a child have conflicts between themselves causing disputes which ultimately affect a grandchild and the grandparents' contact with that grandchild.

In all of the above, and in the actual cases which these themes reflect, my legal duty was to represent the grandparents and fight for their rights to be able to visit with their grandchildren. In no case do I believe that grandparental visitation is an absolute. Not all grandparents should be able to visit with their grandchildren. There may be many instances where in fact it would be detrimental to a child to be subjected to visitation with his or her grandparents given the proper factual setting. However, these decisions must be made on a case by case basis with one underlying theme or factor; and that is, THAT THE BEST INTERESTS OF THE CHILD SHALL CONTROL.

### 3. "Best Interests"-- What Does It Mean?

Michigan, at MCLA 722.23 defines best interests of the child as follows:

722.23 Best interests of the child, definition

Sec. 3. 'Best interests of the child' means the sum total of the following factors to be considered, evaluated, and determined by the court:

- (a) The love, affection, and other emotional ties existing between the parties involved and the child.

(b) The capacity and disposition of the parties involved to give the child love, affection, and guidance and continuation of the educating and raising of the child in its religion or creed, if any.

(c) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.

(d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.

(e) The permanence, as a family unit, of the existing or proposed custodial home or homes.

(f) The moral fitness of the parties involved.

(g) The mental and physical health of the parties involved.

(h) The home, school and community record of the child.

(i) The reasonable preference of the child, if the court deems the child to be of sufficient age to express preference.

(j) The willingness and ability of each of the parents to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent.

(k) Any other factor considered by the court to be relevant to a particular child custody dispute.

This state statute, which was effective April 1, 1971, and amended January 14, 1981, sets forth what the trial court should look to in defining the concept of "best interests" of a child. These eleven factors as set forth above, are to be utilized in both disputes regarding custody of minor children (in pending divorce actions or subsequent requests for modification) as well as when there are disputes regarding visitation. Unfortunately, a careful analysis of the Michigan statute may very well be applicable and quite definitive when dealing with a custody dispute, but somehow falls short when considering the question of visitation. An example would be sub-sections (c), (d), (e), (h), and (j) of the statute. These sub-sections would have very little, if anything, to do with requests for visitation. But, it is all we have in Michigan, when dealing with this issue. In review of other states, factors in considering the definition of "best interests" adds the following factors for a court to utilize:

1. The interaction and inter-relationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interest. (Arizona §25.332);
2. Notice of a custody proceeding shall be given to the child's parents, guardian or other custodian. The court, upon a showing of good cause, may permit intervention by any interested party. (District of Columbia Statute);
3. The court shall not consider conduct of a proposed custodian that does not affect his relationship with the child. (Colorado §14-10-124);
4. In considering a proposed custodian, the court shall not presume that any person is better able to serve the best interests of the child because of that person's sex. (Colorado);
5. The physical violence of threat of physical violence by the child's potential custodian, whether directed against the child or against another person, but witnessed by the child. (Illinois §602);
6. Where the child has reached the age of fourteen, such child shall have the right to select the parent with whom such child desires to live unless that parent selected is determined not to be a fit and proper person to have custody of the child. (Georgia §30-127).

As one can see from above, the states' attempts to define best interests somehow seem more logical when put in the setting of legal proceedings involving disputes as to custody of minor children. Questions of visitation have usually been left to the discretion of trial court judges to determine what visitation should be granted and to whom. Most cases have dealt with questions of visitation concerning non-custodial parents of minor children. We do not have concrete legislation that specifically sets forth criteria to be utilized in making determinations regarding visitation of minor children with their grandparents.

4. The Problem With State Laws As They Currently Stand (Michigan As A Prime Example).

The history of grandparents' rights to visitation in Michigan, can be traced as recently as a little over one decade ago. In 1971 a state law was passed which provided that:

If either the father or mother of an unmarried child is deceased, a parent of the deceased



person may commence an action, by complaint or complaint and motion for an order to show cause, in the Circuit Court of the county in which the child resides for visitation of the child during its minority. If the court finds that such visitation would be in the best interests of the child, it may provide for visitation of the child by general or specific terms and conditions. (MCLA 722.27(a))

This state statute limited the rights of grandparents to seek visitation to situations where there had been a death of their own child leaving a minor grandchild. It would have created a remedy to our client scenario numbers 1 and 2 (as set forth above), except for the fact that a stepparent adoption occurred in those factual situations. This was the problem that Michigan faced when a 1979 Court of Appeals decision (Bikos v Nobliski, 88 Mich App 157 (1979)) was asked to interpret conflicting statutes dealing with this grandparent visitation statute and the Michigan Adoption Statute which provided in part as follows:

After entry of the order of adoption, there shall not be any distinction between the rights and duties of natural progeny and adopted persons, and the adopted person shall become an heir at law of the adopting parent or parents, and an heir-at-law of the lineal and collateral kindred of the adopting parent or parents. After entry of the order of adoption, the adopted person shall no longer be an heir-at-law of his or her natural parents, except that a right, title, or interest vesting before entry of the final order of adoption shall not be divested by that order. (MCLA 710.60)

The Michigan Court of Appeals in the Bikos, supra, case held that the Order of Adoption Statute took precedence over the Grandparent Visitation Statute which effectively made the natural grandparents of a minor child who was adopted by a stepparent following the death of the natural parent, no longer the legal grandparent of that child. Obviously, this conflict created harsh results and in my opinion a tremendously unjust dilemma for grandparents throughout the State of Michigan. In 1980, following the efforts of many groups and individuals, the Michigan Adoption Statute was amended to read:

...after entry of the order of adoption, the adopted person shall no longer be an heir-at-law of a parent whose rights have been terminated or the lineal or collateral kindred of that parent.... (MCLA 710.60 as amended)

The effect of that amendment, was that the adopted child would no longer be an heir to its natural family line once the child's parents' parental rights had been terminated. But, if there had been no termination of parental rights, the child's natural blood line would not be destroyed. This would then not take away from natural grandparents their standing as legal grandparents of a minor child who was adopted unless said adoption followed termination of parental rights.

In addition, in 1980, the Michigan Child Custody Statute (MCLA 722.27) was amended to provide:

Upon petition consider the reasonable visitation of maternal or paternal grandparents and, if denied, shall make a record of such denial.

On its face, one would think this amendment to the Michigan Child Custody Statute would solve the problems that grandparents would have when being denied visitation with their grandchildren. However, albeit the intent of the legislature was good, they placed this amended statute under a section of the Michigan laws which had a preamble. The preamble, or prerequisite to utilization of this amended statute, provided as follows:

If a child custody dispute has been submitted to a circuit court as an original action under this act or has arisen incidently from another action in a circuit court or a judgment of a circuit court, for the best interests of the child the court may: ...

Therefore, in order for a grandparent to attempt to utilize the statute which allows them to petition for consideration regarding visitation, there must either have been, or presently have, a child custody dispute involved. In the cases I have litigated, very rarely does a grandparent seek custody of their grandchild. They merely want visitation and, therefore, cannot avail themselves to the remedy which Michigan has provided. In addition, when the legislature enacted the amendment to the Child Custody Statute which provided for this ability to petition for reasonable visitation (following a child custody dispute), the Michigan legislature repealed the prior law known as the Grandparent Visitation Statute, which was originally enacted in 1971, as cited above (MCLA 722.27(a)). Obviously,

we have a great deal of confusion in our courts as to what is the present status of our laws and how should those laws be interpreted. There are presently pending several new statutes which hopefully will either cure the problem, or add to the conflict, but to date none have passed both Houses of our legislature.

A brief research into how other states handle this dilemma finds that over forty-seven states have passed legislation dealing with this problem. Within these twenty states there are tremendous conflicts, especially once a stepparent adoption occurs. Other conflicts arise in the interpretation of these statutes and whether or not they are to be construed to intend that grandparents have standing to intervene in divorce proceedings to assert their rights to visitation while their own children's divorce matter is pending. Oklahoma (Oklahoma Statute Annotated Title 10, §60.16) has a unique enactment which appears to set forth that grandparents have visitation rights with their grandchildren unless they are terminated by court order, and such is true even though the child may be adopted by his stepparent. Because of the frequency of stepparent adoptions and what affect the stepparent adoptions have on the grandparents of the child, specifically with respect to visitation rights, we need some cohesive legislation on a Federal level to help our states draw together into a unified position with respect to this problem.

##### 5. The Need For Model Act Re: Grandparental Visitation Rights

Other than the need for a clear and concise understanding of this problem from a national perspective, and Federal legislation appropriate thereto, there is another reason why there is a need for Federal legislation dealing with this problem. In several cases wherein I represented grandparents who were forced to seek court enforcement of their visitation rights, we have been threatened by the parent or legal custodian of the minor grandchild involved, that if we were to pursue our court action they, the parent or legal custodian, would remove the child from the State of Michigan. Considering the fact that the City of Toledo, Ohio is approximately the same distance from Detroit, as the capitol of our state, Lansing, Michigan, this threat of removing children from the state is very real. What remedy would a grandparent have when faced with this threat? If we had Federal legislation, along with state legislation, dealing with this problem, such as we have with our civil rights legislation, the threat of moving from one state to another to avoid enforcement of court orders would be a mere "pull of wind."

Our society today is a "transient society." We are little more than three hours away by air from one coast to another. People move from one state to another as easily now as we use to move from one city to another. This is progress, but how does it affect our families and our family structure? Fortunately, we do not have to concern ourselves with the family which is whole, or which is not in dispute. But what of the families who have emotional traumas placed upon them for one reason or another? Should they be afforded protection in situations where unjust actions motivated by animosity, vendictiveness, and hostility, tear apart blood relationships. The problem of grandparents' rights to visitation is no longer a local issue. We need state statutes to protect people within the boundaries of our states. Again, court enforcement of this legislation is a last resort! It is the motivating incentive for parties to reconcile their differences. It is the motivating incentive for parties to voluntarily seek counseling in hopes of reconciling their family traumas. But it does provide a last resort for injustices which may occur.

There is no question in my mind that the problems relating to the rights of grandparents to visit with their grandchildren is a real concern to a great number of people in our country. This concern is one which shall surely grow because of the amount of divorce in our country. We must concern ourselves with the concept of the "extended family" which includes grandparents, stepparents, and other third parties from the traditional family unit. Further, grandparents "as seniors" of our society shall have a greater impact as their numbers increase. The concept of "grandma" and "grandpa" sitting in a corner unable to stand up for themselves and speak, no longer exists. "Grandma" and "grandpa," just a grandson and granddaughter, have inherent rights in our family unit. They are necessary to pass on the heritage of the past. They are a link in the long chain of continued growth and expansion of our society. They should no longer be ignored!

Psychiatrists, psychologists, and social workers can tell us of the importance that grandparents can have on grandchildren. As a former history major, it is interesting to note how different civilizations treat their older generations. It would seem logical that "seniors" can help us learn from our mistakes and teach us traditions and cultures which can be utilized and passed on in the future. Lastly, and it is something that I remind the litigants who are involved in cases where I fight in court for grandparent visitation, and that the parents who are standing in the way of allowing their children to contact, communicate, and share with their grandparents, will one day be grandparents themselves. How do they want their child to remember their own actions. We teach our children not by what we say, but by what we do. It is now time to do what must be done and to recognize the rights and responsibilities that we all face in the most basic structure that God ever created -- the family. This is not a concern isolated to the local community, or even to a state as a whole. This is a concern, and a responsibility, of all citizens in our nation. I urge you to strongly consider adopting legislation, on a Federal level, in support of the rights of grandparents, and the rights of grandchildren in this regard. Thank you for your consideration.

Senator EAST. Thank you, Mr. Victor, for your moving contribution to our discussion this morning.

[Pause.]

Senator EAST. I would like to make just a few general observations on some of the common threads running through all this testimony, and to hear any responses you may have.

If I might make some generalizations here, that all of you have convincingly touched upon a problem which only a few Americans fully comprehend. If I might personalize it a bit, as I reflect back on all of you and what you are saying—I am 52 years old, I just finished having my 30th wedding anniversary, which in this day and age is probably remarkable—not that I am asking credit for it—for a 52-year-old man to have been married 30 years I suppose puts me in the minority.

My parents, who are now deceased, were married 50 years. My father died a few months thereafter, and my mother died about 6 or 7 years later.

As I reflect back on that experience—you see, I took it for granted naturally—but I had a brother, he had four children, and I have two daughters, and there was a very fine relationship between those six grandchildren and their grandparents, and it meant a lot to both. And you don't sense that at the time—you know, you're young, you are in your twenties, and I was married at 22 or 23—and you don't quite have the perspective or view in the twenties or thirties. Often I think what we have lost sight of in this country—we have become so—I don't wish to sound so old-fashioned on this, so youth-cult oriented. The diminution of a mature perspective in this culture has increasingly eroded the nuclear family and the traditional values it embodies.

The new morality has replaced these long-cherished values with the glorification of instant gratification and expediency. The mass media and other institutions have promoted these views so pervasively that now many just assume that marriage is an unnecessary formality that can easily be cast aside. Those of us who don't share this view are often charged with being old-fashioned or out of touch with the new morality.

But I think in time society may reap a very heavy harvest of sorrow for this. Those in the generation now entering their twenties and thirties have been particularly susceptible to the media's derision of traditional norms. To their credit many young people have nevertheless embraced the concept of nuclear family. But for those who smile at it, I am reminded of the great writer, St. Augustine, who wrote in his book, "The City of God," "They are depraved by prosperity and unchastened by adversity."

And I think, as one of you noted here, they never seem to realize they, too, one day will grow older, and that continuity of the family is extremely important.

And I don't wish to wax too long or too hard on this, but you good people here have stirred me to say it, because I reflect back that I benefited from traditional values. My parents stayed together for 50 years—that meant a lot to me. And my wife and I have stayed together for 30 years, and that has meant a lot to my children. One of my daughters is married. I hope the marriage lasts,



and I'm sure it will despite the pressures which have arisen from the new morality assault on the institution of marriage.

I hope that within 4 or 5 years I will be a grandparent. That will mean a great deal to me, it really will, because, as you grow older, you understand the value of tradition.

And so I have been and I hope my grandchildren will be beneficiaries of that kind of family practice. What you people are.

I hope that through today's hearing we might shore up the traditional bonds between grandparents and grandchildren. For as Senator Levin and our witnesses have noted, the restoration of this relationship is crucial to society.

The process of aging catches up—the problem of isolation, loneliness. I live in a big condominium here in Washington, with nice people, wonderful people but just as the flies of the summer they come and go. I come from a small town in North Carolina, where traditional family values predominate. Although these values are laughed at by many in Washington today. I am not too sure but that in my little old home town of Greenville, N.C., they aren't on a little surer path than the adherents of new morality in Washington, D.C.

And ultimately I will stake the survival of this country on those values as opposed to what I think is an unfortunate trend in much of contemporary America.

I think Dr. Kornhaber and Mr. Victor both add a great dimension to this discussion, because you are suggesting, Dr. Kornhaber, that you have observed through your psychiatric practice that these problems can affect the emotional and mental well-being of this country's citizens.

And, Mr. Victor, you added a very important reminder here that Senate Concurrent Resolution 40 is really a very modest proposal. It only asks the Commission on Uniform State Laws to consider drafting a national model law to help grandparents and urge its adoption by the States. This is not an uncommon practice today in America; we do it with commercial law and all other areas. So the idea that one might take this approach with respect to the visitation rights of grandparents and/or grandchildren is certainly not inappropriate.

Uniform codes of law are frequently dealt with by the American Bar Association and other national entities in order to try insure their continuity and stability.

So I don't see any great threat to federalism—and I am generally one who is very conscious of the desires to protect State prerogatives and rights against efforts to federalize every problem.

But I would remind those, in the case of Senate Concurrent Resolution 40, it is a very modest proposal, which urges the convening of a commission to study the drafting of a national model law, which in turn could be taken to the States as a point of departure for their consideration. The process entailed in this legislation would promote the voluntary national uniformity warranted by this national problem. This legislation is consistent with the concept of states' rights and it would mean a great deal to the affected groups.

So I think you added a very valuable dimension there to remind us that we are not proposing Federal law attempting to control

family law in the States. We have historically left it to the States. But we have probably reached a point where steps should be taken to help the States deal with a growing problem. Family law, as you know, is a very legitimate concern of States, and we have a family caucus here that has recently been formed to deal with this whole question and the implications of the disintegration of the nuclear family. So I think it is all a part of a whole. And I find all of you very convincing witnesses, on the medical side of it, on the legal side of it, and then, frankly, on the very much human side of it. I personally have gained a great deal of insight and perspective here.

I would like to invite any other member of the panel to comment briefly.

Yes?

Mr. SUMPTER. Senator, my esteemed partner has a few sentences she would like to tell you, please.

Senator EAST. OK, fine.

Mrs. SUMPTER. Today, everyone is concerned about the inhuman terror tactics of other nations. Isn't it time to admit that there are children who are being killed, crippled, and sexually molested each day in our Nation's families in greater numbers than those also innocent passengers who died aboard the 007 Korean airliner, and no one thinks or cares until it happens in their family.

Our American family structure is in danger. All of us need to recall how the Nazis weakened the family loyalties by turning the young Germans against their parents and older generations. Most of us do not need to read history books to remember what happened to Germany.

Thank you.

Senator EAST. Thank you. Yes, doctor?

Dr. KORNHABER. Senator, I think the passage of the uniform states law would greatly benefit the people who oppose it in the same way that in medicine, sometimes a doctor has to hurt somebody to help them—give them a shot of penicillin in the behind to cure a sore throat.

Children caught between their parents and grandparents suffer greatly. One of them exemplified it well and said If I wasn't alive, my grandparents and parents wouldn't have anything in common, because what they have in common is me and that's what they fight about."

Children are also frightened of what they are going to do as parents to their own parents when they see their own parents reject their grandparents. With kids it's monkey-see, monkey-do—you can tell them whatever you want, they watch what you do and that is the way they become.

Putting a law like this in action says that we honor emotional attachments in our land. What you have been talking about in Greenville is really an emotional attachment—in our society. We worship wealth, beauty, youth, and power, we don't worship emotional attachments. All psychologists will tell you the way we resolve our attachments to our parents and grandparents is really the paradigm of all our human relationships.

By passing a uniform visitation law we are really making a statement to all succeeding generations saying we are attached. This will also be a very powerful message to elders as far as their own

consciousness concerning their importance as grandparents. If they know they are stuck in that role, by gosh, they are going to do something about it to make it better.

In our study, we found a Nation of grand-orphans; we found 85 percent of these children don't know old people. It's a national disgrace. Yet there is an enormous attraction between the young and the old that is only to be acted upon to flourish.

There is at the grass roots in the country an emotional revolution, taking place. In the course of our research, we found many grandparents who didn't care, we also found folks who did care. They were going against the grain of the national narcissism and of the Nation.

Many of the parent generation—and this is important—who oppose the bill feel that many grandparents are wacky. They described grandparents as irrational, or intrusive. They felt that grandparent interest was intrusion and caring was meddling. Indeed, grandparents were upset because their grandchildren, their own flesh and blood, were taken away from them. Many grandparents of sensitive nature suffered great pain, indeed many of them did become psychotic. This became a self-perpetuating prophecy of the middle generation—well, parents said “they are wacky, I don't want them near my kids.” But some grandparents became that way, psychotic, because of the mental pain of being separated from their grandchildren.

So I think this law is going to be beneficial to those parents who are ambivalent. That's what's important.

Senator EAST. Thank you. Well, our time grows very short.

Does anyone else have a comment?

Mr. HIGHTO. Yes.

Senator EAST. Mr. Highto.

Mr. HIGHTO. I think Dr. Kornhaber may bear this out—I think there was a psychological survey at one time that traced delinquent behavior of young teenagers to the elderly population, to the fact that most of them didn't know any old people really, they couldn't relate to them. And the attacks on old people are generated from this particular psychosis really.

And in fact there are some families who are looking for grandparents for their children; they want to adopt grandparents where they don't have any of their own.

Mrs. HIGHTO. Foster grandparents.

Mr. HIGHTO. So that is one of the psychological points of delinquent behavior.

Senator EAST. Thank you. Well, if there are no further comments, again I would like to thank all of you for coming, and the subcommittee will in due course act on this as promptly as it can.

And I would like, then, since we have all said our piece—we had two additional witnesses this morning, Mr. Robert A. Destro, assistant professor of law at Catholic University, and Linda Mullenix, visiting assistant professor of law at Catholic University—and Mr. Destro unfortunately cannot be with us, but I would like to then excuse you good people—you are certainly welcome to stay in the audience, if you would like, or do whatever your schedules are now demanding of you—again, my thanks to you all for coming and making your contribution.



I would like to invite Ms. Linda Mullenix, Professor Mullenix, of the Catholic University School of Law, to come forward please.

Professor Mullenix, I appreciate your coming. I am sorry that Professor Destro cannot be with us this morning. I would like the record to show, and if it is allowed, that his statement will be made a part of the permanent record of this committee.

Ms. Mullenix, I would appreciate it that you, too, lest we be unfair in our time equalization, confine your comments to 10 minutes, and then keep in mind that your extended remarks will be made a part of the permanent record. Again, we thank you for taking the time from your busy schedule to come, and you may proceed.

**STATEMENT OF LINDA S. MULLENIX, VISITING ASSISTANT PROFESSOR OF LAW, COLUMBUS SCHOOL OF LAW, CATHOLIC UNIVERSITY OF AMERICA**

Ms. MULLENIX. Thank you, Mr. Chairman. This statement has been prepared to assist the Senate Subcommittee on Separation of Powers in drafting a nonbinding resolution directed to the National Conference of Commissioners on Uniform State Laws concerning visitation rights of grandparents.

Basically, the committee has requested information concerning the current legal status of grandparents in family law disputes. The purpose of this statement is twofold: First, it will summarize current principles, rules, and case law governing grandparental rights; second, it will highlight recent developments, special issue areas, and emerging trends in this area of law.

This statement is in no way intended to state a position on the issues that are articulated, nor does it advocate a particular philosophy or thesis. It is designed primarily to inform the subcommittee of the present law pertaining to grandparents' rights.

The first part of this presentation, which is the part that I am doing, focuses on the problem of visitation rights. This particular problem has precipitated a tremendous proliferation of litigation during the last 10 years. In addition, a sizable body of secondary literature has been directed at this problem.

The second part of the presentation, which my colleague, Bob Destro, was going to do, deals with grandparents' rights in all other areas of the law, such as child custody and adoption, and he had prepared a statement which he will submit to the committee.

We have appended a bibliography of legal sources plus summaries of about 60 recent cases in the last 5 years concerning grandparental rights, to be part of the record of the committee and used as a legal reference.

Basically, since the early sixties when many jurisdictions began enacting grandparent visitation statutes, there has been a tremendous growth in litigation by grandparents seeking visitation privileges.

What I would like to do, is outline what I am going to be talking about.

First, I am going to delineate the different types of fact situations in which grandparents' visitation problems arise; I also will inform the committee concerning the various procedural remedies

which are legally available to grandparents to assert their claims and will discuss very briefly the best-interests-of-the-child standard as applied by the courts.

Second, I will discuss the common law rules governing grandparental rights, because there are still some jurisdictions which do apply the common law rules.

Third, I will discuss the various grandparental visitation statutes which have been adopted in more than 40 States; and then I will also summarize the disposition of cases under the statutes.

Last, I will pay special attention to the particular problem of the conflict between visitation statutes and adoption statutes.

#### SUMMARY OF THE LAW

Basically there are six different situations or fact patterns where disputes arise between parents, grandparents, and children concerning visitation rights. These situations are (1) where the child's parents are living apart, (2) where the child's parents are living and divorced, (3) where the child is adopted after a divorce, (4) where the child's parents' marriage is annulled, (5) where the child's parents are deceased, and (6) where the child is adopted after the death of the parent.

There are also some special situations not encompassed by these categories, but pretty much all visitation litigation falls into one of these six fact patterns.

Concerning procedural relief available to grandparents, there are basically three different avenues of relief. The first and the most common method of asserting a visitation claim is through a habeas corpus petition which usually requires pleading and proof that such visitation would be in the best interests of the child.

A second avenue of relief, where the child is in the custody of one parent, is to seek a declaratory judgment of visitation privileges.

A third possible procedural approach, where grandparents have lost custody of a grandchild to a parent, is a motion to modify custody decree. This motion might have to plead and prove that the custodial parent is unfit or has committed acts of misconduct.

In some jurisdictions, grandparents may be required by statute to serve notice of such a motion to both parents. Also, in some jurisdictions, grandparents may wish to petition the court to join as parties at the time of divorce to secure visitation rights as part of the parents' divorce decree.

In many States, the statutory standards for the award of visitation rights to grandparents is that of the best interests of the child. Although this standard is variously interpreted by the courts, in general the standard is the same as that used in child custody cases. Therefore, in evaluating the best interests of the child, the court will look to the wishes of the child, the interaction and interrelationship of the child with his parents, siblings, and other persons, and, the effects on the mental and physical well-being of the child.



## COMMON LAW RULES

Turning to the common law rule governing grandparental rights in visitation cases, basically, there are two theories for resolving disputes involving grandparents, parents, and the grandchild.

The first theory recognizes parental rights to custody and control of children as paramount, and therefore visitation privileges are solely within the authority of the parent. This has been the common law approach to visitation controversies.

The second theory accords greater weight to considerations of the child's best interests and welfare, and this has been the modern statutory approach to resolving visitation disputes.

The common law rule is very simple: it posits that a parent's obligation to allow a grandchild to visit his or her grandparents is a moral and not a legal right, and therefore any claim of right is unenforceable in court. Furthermore, absent a show that the custodial parent is unfit, the judiciary should not interpose itself in family controversies. Where the common law rule has been adopted, courts have further indicated that the custodial parent is not accountable to the courts or the grandparents for denying visitation privileges.

Courts have articulated a number of reasons in support of the common law rule for denying visitation privileges to grandparents. First, as previously indicated, courts view the parental obligation to allow grandparents visitation as a moral obligation not a legal one; second, some courts believe that the judicial enforcement of grandparental visitation rights would divide parental authority and hinder it; third, many courts have asserted that the best interests of the child would not be furthered by forcing a child into the center of the conflict between his parents and his grandparents; fourth, when there is conflict between parents and grandparents concerning visitation, parents alone should be the judge without having to account to anyone for their motives in denying visitation privileges; and finally, some courts suggest that the ties of nature are the only efficacious means for insuring normal family relations, not judicial intervention into family affairs.

There are three articulated exceptions to the common law rule. The first one is where the grandparents are initially granted visitation privileges pursuant to a divorce decree or other similar judicial proceeding. The second exception is where the grandchild has previously resided for some time with the grandparents who are seeking visitation privileges; and the third exception to the common law bar is where grandparents successfully demonstrate that the custodial parent or the parent seeking custody is unfit.

## STATUTORY VISITATION PRIVILEGES

Those are the only exceptions to the common law rule.

Since the early 1960's, 42 states have enacted some form of legislation concerning grandparental visitation rights.

The written statement to the subcommittee basically analyzes the different kinds of State statutes now on the books. The language in the State statutes varies widely. The most common form of visitation statute basically provides for standing to present a

visitation claim when the parents are divorced or are deceased. But, again, the language varies widely.

Not all of the statutes specifically mention grandparents; some of the statutes are much broader. For example, the statute in California allows any other person interested in the welfare of the child to petition for visitation rights; some statutes use the term "relatives" which obviously is much more inclusive than grandparents. At any rate, the variety of language is indicated in the written statement.

With the exception of the statutes in California, Minnesota, and Oklahoma, none of the statutes provide for a situation where a grandchild is subsequently adopted by a new stepparent. The failure of grandparent visitation statutes to address this problem has resulted in a tremendous proliferation of litigation, particularly where the visitation statute conflicts with adoption statutes.

The written statement indicates how courts have, in different situations either held visitation rights permissible, impermissible, or terminated previously existing rights.

Last, I would like to address the special problem of conflicts between visitation statutes and adoption statutes.

Senator EAST. OK.

#### CONFLICTS WITH ADOPTION STATUTES

Ms. MULLENIX. Again, with the exception of three States—California, Minnesota, and Oklahoma—no visitation statute provides for visitation rights to grandparents where there has been an intervening stepparent adoption subsequent to the death or divorce of a parent. As a consequence, this special situation has been the focus of most of the recent litigation concerning grandparental visitation rights.

Basically, courts have taken three approaches here. One approach is the common law approach. Under this view, an intervening stepparent adoption divests grandparents of any statutory visitation rights. This approach has been adopted in Iowa, Kansas, and Louisiana. The theory is that an adoption terminates any legal right and the adoption statute supersedes any grandparent visitation rights.

A minority approach, is that visitation statutes give grandparents no absolute rights to visitation privileges, but the statutes do confer standing on such plaintiffs to litigate whether such visitation would be in the grandchild's best interests. California, New York, and Ohio have adopted this approach which seeks to give effect to grandparents' visitation rights notwithstanding an intervening stepparent adoption.

In particular, California courts view grandparent visitation statutes as a flexible device to promote a grandchild's welfare rather than as a right derived from parenthood.

The most radical approach, where you have a visitation statute in conflict with an adoption statute, has been adopted in New Jersey. The New Jersey Supreme Court has held that the New Jersey visitation statute changes the common law rule and creates an independent cause of action in grandparents regardless of any intervening adoption.

In addition, the courts in New Jersey have created a presumption that the best interests of the child are ordinarily served by maintaining contact with the grandparents, and that is about the most extreme position in the law today.

[The following was received for the record:]

## PREPARED STATEMENT OF LINDA S. MULLENIX

I. Introduction

This statement has been prepared to assist the Senate Subcommittee on Separation of Powers in drafting a non-binding resolution directed to the National Conference of Commissioners on Uniform State Laws, concerning the visitation rights of grandparents. Basically, the committee has requested information concerning the current legal status of grandparents in family law disputes.

The purpose of this statement is twofold. First, it will summarize current principles, rules, and case law governing grandparental rights. Second, it will highlight recent developments, special issue areas, and emerging trends in this area of law. This statement is in no way intended to state a position on the issues articulated, nor does it advocate a particular philosophy or thesis. It is designed to inform the subcommittee of the present law pertaining to grandparents' rights.

The first part of this presentation focuses on the problem of visitation rights or privileges. This particular problem has precipitated a tremendous proliferation of litigation during the last ten years. In addition, a sizeable body of secondary literature has been directed at this problem. The second part of this presentation will deal with all other areas of grandparental rights, including custody and adoption. A bibliography of legal sources and summaries of recent cases are appended to help the subcommittee in its work.

II. Grandparents' Visitation Rights

Since the early 1960s when many jurisdictions began enacting

grandparents' visitation statutes, there has been a tremendous growth in litigation by grandparents seeking visitation privileges. This section of the discussion will examine various aspects of the "visitation rights" problem. First, various situations in which grandparental visitation disputes are likely to arise will be set out. Available procedural remedies and the "best interest of the child" standard will be discussed. Second, the common law rules governing grandparental visitation privileges will be examined, as these rules are still applied in some jurisdictions. Third, the various visitation statutes enacted in more than forty states will be analyzed. Fourth, an examination of the disposition of specific cases, according to common law principles or statutory interpretation, will follow. Special attention will be paid to visitation statutes that conflict with adoption statutes. A summary of recent cases, as well as a bibliography, will end this section of the presentation.

#### A. Fact Patterns Involving Grandparental Visitation Disputes

There are basically six different situations where grandparents have asserted claims to visitation rights with their grandchildren. The disposition in each of these fact patterns differs and will depend on whether the jurisdiction adopts common law rules or certain interpretations of applicable visitation and adoption statutes. In each of the following situations, courts in different jurisdictions have held visitation rights to be permissible, impermissible, or subject to termination. The fact patterns giving rise to grandparental visitation disputes, then, are:

- (1) where the child's parents are living apart;
- (2) where the child's parents are living and divorced;
- (3) where the child is adopted after a divorce;
- (4) where the child's parents' marriage is annulled;
- (5) where the child's parent(s) is/are deceased;
- (6) where the child is adopted after the death of a parent.



A few cases have been decided where the status of the child's parents is unspecified, and some special situations fall outside this categorization, as for example where a husband kills his wife and the maternal grandparents then sue for visitation rights. Almost all decided cases, however, are described by one of the six fact patterns delineated above. See Annot., Grandparents' Visitation Rights, 90 A.L.R.3d 222 (1979).

1. Procedural Remedies Available to Grandparents  
Asserting Visitation Claims

There are basically three different procedural avenues of relief available to grandparents seeking to assert a claim to visitation rights. These procedural remedies vary from state to state. The most common method of asserting a visitation claim is through a habeas corpus action, which usually requires pleading and proof that such visitation would be in the best interests of the child. A second avenue of relief, where the child is in the custody of one parent, is to seek a declaratory judgment of visitation privileges. A third possible procedural approach, where grandparents have lost custody of a grandchild to a parent, is a motion to modify a custody decree. This motion might have to plead and prove that the custodial parent is unfit or has committed acts of misconduct. See Annot., Grandparents' Visitation Rights, 90 A.L.R.3d at 228-229. In some jurisdictions, grandparents may be required by statute to serve notice of such a motion to both parents. Also, grandparents may wish to petition the court to join as parties, at the time of divorce, to secure visitation rights as part of the parents' divorce decree. 90 A.L.R.3d at 230-232.

2. The "Best Interests of the Child" Standard As  
Applied in Grandparental Visitation Actions

In many states the statutory standard for the award of visitation rights to grandparents is that of "the best interests of

the child". Although this standard is variously interpreted and applied by courts, in general the standard is the same as that utilized in child custody cases. Therefore, in evaluating "the best interests of the child," the courts will look to:

- (a) the wishes of the child;
- (b) the interaction and interrelationship of the child with parents, siblings, and other persons;
- (c) the effects on the mental and physical well-being of the child. 90 A.L.R.3d at 229:230.

#### B. The Common Law Rules Governing Grandparental Rights in Visitation Cases

There are basically two theories for resolving disputes involving grandparents, parents, and grandchildren. The first theory recognizes parental rights to custody and control of their children as paramount and therefore visitation privileges are solely within the authority of the parent. This is the common law approach to visitation controversies. The second theory accords greater weight to considerations of the child's best interests and welfare, and this has been the modern statutory approach to resolving visitation disputes.

The common law rule governing grandparental visitation rights is quite simple. The rule posits that a parent's obligation to allow a grandchild to visit his grandparents is a moral, not a legal right, and therefore any such claim of right is unenforceable in court. Furthermore, absent a showing that the custodial parent is unfit, the judiciary should not interpose itself in family controversies. Succession of Reiss, 46 La. Ann. 347, 15 So. 151 (1894). See Comment, Grandparents' Visitation Rights in Georgia, 29 Emory L. Rev. 1083, 1087 (1980); Note, Statutory Visitation Rights of Grandparents: One Step Closer to the Best Interests of the Child, 26 Cath. U.L. Rev. 387, 389 (1977). Where the common law rule has been adopted, courts have further indicated that the

custodial parent is not accountable to the courts or the grandparents for denying visitation privileges. Odell v. Lutz, 78 Cal. App. 2d 104, 177 P.2d 628 (1947).

Courts have articulated five basic reasons for the common law rule denying visitation privileges to grandparents. First, as previously indicated, the courts view the parental obligation to allow grandparent visitation as a moral obligation, not as a legal one. Second, some courts believe that the judicial enforcement of grandparental visitation rights would divide parental authority and hinder it. Third, many courts have asserted that the best interests of the grandchild would not be furthered by forcing a child into the center of a conflict between his parents and his grandparents. Fourth, when there is a conflict between grandparents and parents concerning visitation, the parents alone should be the judge without having to account to anyone for their motives in denying visitation privileges. Finally, some courts suggest that the "ties of nature" are the only efficacious means of ensuring normal family relations, not judicial intervention into family affairs. See Foster and Freed, Grandparents Visitation: Vagaries and Vicissitudes, 23 St. Louis U.L.J. 643, 646-647 (1979).

The courts have articulated three exceptions to the common law rule denying visitation privileges as a matter of right. The first exception is where the grandparents are initially granted visitation privileges pursuant to a divorce decree or other similar judicial proceeding. The second exception is where the grandchild has previously resided for some time with the grandparents seeking visitation privileges. And the third exception to the common law bar is where the grandparents successfully demonstrate that the custodial parent (or parent seeking custody) is unfit. See Grandparents Visitation, supra, 23 St. Louis U.L.J. at 646.

C. Grandparents' Visitation Statutes: A  
Summary Description of Provisions

Since the early 1960s, forty-two states have enacted some form of legislation concerning grandparental visitation rights. Although most of these statutes specifically indicate that they protect grandparents' claims to visitation, a minority of statutes do not especially mention grandparents. Nonetheless, these statutes do contain language which can be interpreted as including grandparents among the persons entitled by law to petition for visitation rights. State statutes containing this more generalized language are found in Alaska, Colorado, Delaware, Hawaii, Indiana, Michigan, Ohio, and Washington. See Comment, Grandparents' Visitation Rights, supra, 29 Emory L. Rev. at 1086-1087 n.13.

As will be discussed below, the statutory provisions in the forty-two states vary tremendously, so lawyers must consult the specific statute in their jurisdiction to discover the exact language utilized to protect grandparental visitation claims. In addition, the existence of widely varying statutory provisions gives rise to complicated conflicts-of-law problems, as where custodial parents remove a grandchild to a foreign state where the contesting grandparents do not reside.

Two generalizations may be made about these statutes, however. Almost all the statutes permit grandparents to sue for visitation privileges when their child has died and the custodial parent subsequently refuses access to the grandchildren. In addition, most of the statutes allow grandparents standing to present, in a habeas corpus proceeding, evidence showing that visitation would be in the best interests of the child. Courts then make findings of fact based on this evidence and any countervailing evidence submitted by the custodial parents. See Note, Statutory Visitation Rights of Grandparents, supra, 26 Cath. U.L. Rev. at 393; Foster and Freed, Grandparents Visitation, supra, 23 St. Louis L.J. at 653-656.

The following list conveys the wide variation among statutory provisions governing grandparental claims to visitation privileges. This survey is not an exhaustive description of all the existing statutes, but merely indicates the types of different provisions currently in effect:

- (1) Grandparents have standing to initiate a hearing, where one parent is dead and the surviving parent denies visitation rights to the grandparents.  
E.g., Mo. Ann. Stat. sec. 452.402 (1977).
- (2) Grandparents have standing to assert a visitation claim where a grandchild's parent or parents are dead, and in situations "in which equity would see fit to intervene." E.g., N.Y. Dom. Rel. Law sec. 72 (Consol.) (1977).
- (3) Grandparents will be awarded visitation rights, but one or both parents must be deceased. E.g., Cal. Civ. Code secs. 197.5 and 4601 (West Supp. 1978); Mich. Comp. Laws Ann. sec. 722.27a (Cum. Supp. 1977-78); Ohio Rev.Code sec. 3109.11 (Cum. Supp. 1977).
- (4) Grandparents may be awarded visitation rights in any divorce or custody case, without limitations. E.g., Ark. Stat. Ann. sec. 34-1211.1 (Supp. 1977).
- (5) Grandparents may be awarded visitation rights when a parent or parents are deceased, or when the parents are divorced. E.g., Conn. Gen. Stat. Ann. sec. 46-42 (West Cum. Supp. 1978).
- (6) Grandparents may be awarded visitation rights after the separation, divorce, or death of the parents.  
E.g., La. Civ. Code Ann. Art. 157 (West Supp. 1978).
- (7) Grandparents may be awarded visitation rights where the grandchild has resided with the grandparents or they have had considerable personal contact with the child, a parent is deceased, or the parents



- are seeking a divorce. E.g., Minn. Stat. Ann. sec. 257.022 (West Cum. Supp. 1977).
- (8) Grandparents may be considered for visitation rights or custody. E.g., Texas Fam. Code Ann. tit. 2, sec. 14.0 (Vernon) (Supp. 1978).
- (9) Grandparents or great-grandparents may be awarded visitation when it is in the best interests of the child. E.g., Wis. Stat. Ann. sec. 247.245 (West Supp. 1978).
- (10) Grandparents have visitation rights with their grandchildren unless such rights are terminated by court order and even though the child is adopted by a stepparent. E.g., Okla. Stat. Ann. tit. 10, sec. 60.16 (West). As will be discussed below, Oklahoma's statute is unique with regard to its stepparent adoption provision.
- (11) Grandparents may be awarded visitation rights where the grandchild is adopted by a stepparent or other grandparents, but not otherwise. E.g., Cal. Civ. Code sec. 197.5(e); Minn. Stat. Ann. sec 257.022 Subd. 3.
- (12) Other relatives, in addition to grandparents, may seek and obtain visitation rights. See e.g., Cal. Civ. Code sec. 4601 ("anyone interested in the welfare of the child"); Conn. Gen. Stat. Ann. sec. 46-42 ("any third party including but not limited to grandparents"); Haw. Rev. Stat. sec. 571.4617 ("any other person having an interest in the welfare of the child"); Ohio Rev. Code sec. 3109.11 ("relatives").
- (13) Grandparents may be awarded visitation rights provided there is a showing this is consistent with "the best interests of the child." E.g., N.Y. Dom. Rel. Law sec. 72; Minn. Stat. Ann. sec. 257.022 (court must consider amount of personal contact

between grandparents and grandchild); Idaho statute (court requires "substantial relationship" with the child).

With the exception of the statutes in California, Minnesota, and Oklahoma, none of the statutes provide for the situation where a grandchild is subsequently adopted by a new stepparent or stepparents. The failure of grandparent visitation statutes to address this problem has resulted in a tremendous proliferation of litigation, particularly where visitation statutes conflict with adoption statutes. The special issue of subsequent adoption and visitation rights will be discussed separately, in section E, below.

D. Grandparents' Visitation Rights: A Summary of the Disposition of Cases in Various Fact Patterns, Pursuant to Common Law Principles and Statutory Interpretation

Grandparent visitation rights have been awarded, denied, or terminated in four types of domestic relations situation: (1) where the parents are living apart, are divorced, or their marriage has been annulled; (2) where the parents are deceased; (3) where there has been a stepparent adoption after the divorce of the parents; and (4) where there has been a stepparent adoption after the death of a parent or parents. Each of these situations will be considered below, and the reason for denial or award of visitation rights will be summarized in outline form. A list of recent cases follows this statement, plus a bibliography of secondary case commentary. The subcommittee is especially referred to the annotation at 90 A.L.R.3d 222 (1979) for a discussion of particular cases and holdings.

1. Cases Where Parents Are Living Apart, Are Divorced, or Their Marriage Has Been Annulled

(a) Courts have granted visitation rights to grandparents because:

- (1) the grandchildren had once lived with the grandparents and there was an emotional bond that might be harmed if these ties were severed;
  - (2) prior stipulations or agreements as to visitation rights had been adjudicated previously;
  - (3) it would be in the best interests of the child;
  - (4) statutes in the jurisdiction permitted grandparents to apply for visitation privileges if shown to be in the best interests of the child.
- (b) Courts have denied visitation rights to grandparents because:
- (1) the child lived in the custody of a fit and proper parent;
  - (2) the parent should be the one to decide with whom his child will associate;
  - (3) a visitation award to a non-parent would be unjustified and unenforceable.

## 2. Cases Where A Parent or Parents Is/Are Deceased

- (a) Courts have granted visitation rights to grandparents because:
- (1) visitation would be in the best interests of the child;
  - (2) at a parent's death, the relationship between a grandchild and grandparent would result in a positive benefit to the child;
  - (3) it is no abuse of discretion for a judge to so award visitation privileges under the mandate of a visitation statute.
- (b) Courts have denied visitation rights to grandparents because:
- (1) the welfare and happiness of the grand-

- children did not require such visitation;
- (2) some grandchildren actually became ill as a result of fighting between grandparents and a surviving parent;
- (3) no cause of action existed in favor of grandparents for visitation rights.

### 3. Cases Where There Has Been A Stepparent

#### Adoption After The Divorce of Parents

- (a) Courts have held that grandparents are entitled to a hearing to assert their claims to visitation rights because:
  - (1) grandparental rights of visitation did not automatically terminate where an adoptive process was begun;
  - (2) a hearing was permissible provided it did not unduly hinder the adoptive process;
  - (3) a proceeding was necessary to determine if visitation would be in the best interests of the child.
- (b) Courts have denied visitation rights to grandparents subsequent to a stepparent adoption following a divorce because:
  - (1) previously existing rights of visitation ceased to have legal effect at adoption;
  - (2) the natural spouse's parental rights terminated at the time of adoption;
  - (3) upon adoption, the grandchildren became legal strangers to the bloodline of their divorced, non-custodial natural parent.

### 4. Cases Where There Has Been A Stepparent

#### Adoption After The Death(s) of Parent(s)

- (a) Courts have awarded visitation rights to grandparents because:
  - (1) visitation statutes are distinct from adoption statutes;

- (2) visitation rights should be determined on a case-by-case basis, and not absolutely barred by adoption statutes;
  - (3) visitation rights should be granted upon a finding it would be in the best interests of the child;
  - (4) visitation rights should be granted where the grandchild had lived with his grandparents and a great bond of love and affection had grown between them.
- (b) Courts have not granted visitation rights to grandparents because:
- (1) adoption has the legal effect of prohibiting grandparents from exercising any previously existing rights;
  - (2) upon adoption, children obtain new parents and grandparents;
  - (3) if visitation statutes were construed to authorize grandparents to seek visitation privileges from adoptive parents, such construction would work as a strong deterrent to future adoptions.

E. The Special Problem of Conflicts Between Visitation Statutes and Adoption Statutes

With the exception of three states, California, Minnesota, and Oklahoma, no visitation statute provides for visitation rights to grandparents where there has been an intervening stepparent adoption subsequent to the death or divorce of a parent. As a consequence, this special situation has been the focus of most of the recent litigation concerning grandparental visitation privileges. See section F of this statement, below. Basically, courts have adopted three approaches to dealing with the situation where there has been an intervening stepparent adoption:



### 1. The Common Law Approach

Under this view, an intervening stepparent adoption divests grandparents of statutory visitation rights. This approach has been adopted in Iowa, Kansas, and Louisiana. See In Re Adoption of Gradiner, 287 N.W.2d 555 (Iowa 1980); Browning v. Tarwater, 215 Kan. 501, 524 P.2d 1135 (1974); Burch v. Louque, 392 So.2d 120 (La. App. 1980).

### 2. Minority Approach: Standing to Sue

Under this view, visitation statutes give grandparents no absolute rights to visitation privileges, but the statutes do confer standing on such plaintiffs to litigate whether such visitation would be in the grandchild's best interests. California, New York, and Ohio have adopted this approach, which seeks to give effect to grandparent visitation rights notwithstanding an intervening stepparent adoption. In particular, California courts view grandparent visitation statutes as a flexible device to promote a grandchild's welfare, rather than as a right derived from parenthood. See Reeves v. Bailey, 53 Cal. App. 3d 1019, 126 Cal. Rptr. 51 (1975); Sibley v. Sheppard, 54 N.Y.2d 320, 445 N.Y.S.2d 420, 429 N.E.2d 1049 (1981); Graziano v. Davis, 50 Ohio App. 2d 83, 361 N.E.2d 525 (1976).

### 3. Most Radical Approach: Independent Cause of Action

The most radical approach to the conflict between adoption statutes and visitation statutes has been adopted in New Jersey. See Mimkon v. Ford, 66 N.J. 426, 332 A.2d 199 (1975). The New Jersey Supreme Court has held that the New Jersey visitation statute changes the common law rule and creates an independent cause of action in grandparents, regardless of any intervening adoption. In addition, the courts in New Jersey have created a presumption that the best interests of the child are ordinarily served by maintaining

contact with the grandparents. See Globman v. Globman, 158 N.J. Super 338, 386 A.2d 390 (1978).

(F) Listing of Recent Cases and Holdings

1982

Adoption of Bowling v. Bowling, 631 S.W.2d 386 (Tenn. 1982) (adoption by maternal grandparents of grandchild whose father killed its mother would sever prior legal relationships and end court-ordered visitation rights in paternal grandparents).

1981

Wilson v. Wallace, 274 Ark. 48, 622 S.W.2d 164 (1981) (no visitation rights in paternal grandparents where father was deceased, mother remarried, and stepfather adopted child; statute terminated all legal relationships).

Cox v. Stayton, 273 Ark. 298, 619 S.W.2d 617 (1981) (at common law, grandparents have no presumptive right of visitation with grandchildren absent order of chancery court and depending on best interests of the child).

Kudler v. Smith, 643 P.2d 783, cert. denied, 74 L.Ed 2d 78 (Colo. App. 1981) (visitation by maternal grandparents terminated where father resided in foreign state and grandparents frequent criticism of father during visits undermined father's authority).

Ferrell v. Ruege, 397 So.2d 723 (Fla. App. 1981) (grandmother's visitation privileges reduced although established by prior court order where mother was fit and stepfather adopted child).

Smith v. Finstad, 247 Ga. 603, 277 S.E.2d 736 (1981) (grandparents had standing to seek visitation privileges where son lost parental rights as result of wife's new husband's adoption of grandchild. Statute allowing grandparents to seek visitation not unconstitutional).

Hawkins v. Hawkins, 102 Ill. App. 3d 1037, 58 Ill. Dec. 620, 430 N.E.2d 652 (1981) (visitation rights granted maternal grandparents where father had custody, mother was deceased, and parents were divorced; visitation in best interests of child).

Krieg v. Glassburn, 419 N.E.2d 1015 (Ind. App. 1981) (grandparents may be awarded visitation rights by showing it is in best interests of child; visitation privileges would terminate by final decree of adoption).

In Re Guardianship of Brown, 402 So.2d 354 (Miss. 1981) (no visitation rights in paternal grandparents where mother was suitable person to have custody).

Hamilton v. Hamilton, 622 S.W.2d 252 (Mo. App. 1981) (award to paternal grandparents in dissolution decree of visitation rights was proper).

Sibley v. Sheppard, 54 N.Y.2d 320, 445 N.Y.S.2d 420, 429 N.E.2d 1049 (1981) (maternal grandparents entitled to visitation rights where parents never married, both were deceased, and child adopted by paternal grandparents. Child had lived with maternal grandparents until four; visitation in best interests of child).

C. v. B., 84 App. Div. 2d 740, 443 N.Y.S.2d 739 (2d Dept. 1981) (maternal grandparents granted visitation privileges with grandchild in father's custody).

Julien v. Gardner, 628 P.2d 1165 (Okla. 1981) (no visitation rights in maternal grandparents where father was still alive and statute provided for visitation rights only where both parents deceased or divorced).

In Re Interest of R., 286 Pa. Super 480, 429 A.2d 40 (1981) (visitation by maternal grandmother proper where mother died and custody granted to foster mother).

Minns v. Minns, 615 S.W.2d 893 (Tex. Civ. App. 1st Dist. 1981) (no award of visitation privileges to paternal grandparents; father granted generous visitation privileges which he could share with grandparents).

1980

Re Adoption of Hensley, 270 Ark. 1004, 607 S.W.2d 80, disapproved, Wilson v. Wallace, 274 Ark. 48, 622 S.W.2d 164 (1981) (paternal grandparents wrongfully denied visitation rights following death of child's father and custody award to stepfather. Remand for consideration of whether visitation in best interests of child).

Re Adoption of Gardiner, 287 N.W.2d 555 (Iowa 1980) (no award to maternal grandparents where natural mother died, father's parental rights terminated, and adoptive parents awarded custody).

Burch v. Louque, 392 So.2d 120 (La. App. 1980) (granting of fixed visitation rights to paternal grandparents improper where natural mother and adoptive father sought order modifying prior decree).

Aegerter v. Thompson, 610 S.W.2d 308 (Mo. App. 1980) (no constitutional rights in paternal grandparents to visitation rights after death of natural father, remarriage of mother, and adoption by new husband).

Barry v. Barrale, 598 S.W.2d 574 (Mo. App. 1980) (paternal grandparents allowed visitation where father deceased and mother prohibited visitation; no physical or emotional injury could occur).

Chirumbulo v. Chirumbulo, 75 App. Div. 2d 992, 429 N.Y.S.2d 112 (4th Dept. 1980) (grandparents visitation privileges allowed over mother's objections regarding father's failure to provide child support).

Hood v. Connaughton, 75 App. Div. 2d 532, 426 N.Y.S.2d 574 (2d Dept. 1980) (rights to grandparents to visit deceased daughter's children overextensive where visits would hinder adjustment to new family by separating them on traditional family holidays).

Leake v. Grissom, 614 P.2d 1107 (Okla. 1980) (paternal grandparents had no rights to visitation privileges where child adopted by natural mother's new husband and parental rights of natural father terminated).

1979

Re Adoption of M., 367 So.2d 744 (Fla. App. 1979) (paternal grandparents improperly awarded visitation rights where statute did not provide for visitation rights in adoption cases).

Shuler v. Shuler, 371 So.2d 588 (Fla. App. 1979) (right of visitation depends on the best interest of the child).

Osteryoung v. Leibowitz, 371 So.2d 1068 (Fla. App. 1979) (no independent civil action by grandparents permissible to achieve visitation rights where no dissolution proceeding pending between childrens' parents).

Mead v. Owens, 149 Ga. App. 303, 254 S.E.2d 431 (1979) (visitation privileges denied; grandparents' visitation rights could be determined only in custody or guardianship proceedings, not adoption proceedings).

Sparks v. Wigglesworth, 5 Fam. L. Rptr. 3173 (Ky. App. 1979) (paternal grandparents awarded visitation rights where parents separated and mother had custody of child; award based on best interests of the child).

Bikos v. Nobliski, 88 Mich. App. 157, 276 N.W.2d 541 (1979) (maternal grandparents' visitation rights terminated where father remarried after death of wife and stepmother adopted children; visitation subject to determination of natural and adopting parents).

Re Marriage of Pickering, 588 S.W.2d 232 (Mo. App. 1979) (grandparents' visitation rights depend on best interests of the child).

Shadders v. Brock, 101 Misc. 2d 11, 420 N.Y.S.2d 697 (1979) (where grandparents awarded visitation rights as part of divorce decree, mother could not deny visitation as method of disciplining child).

Fetters v. Allbright, 405 A.2d 1260 (Pa. Super 1979) (maternal grandparents entitled to visitation rights where mother died, children resided with grandparents for several years prior to



father gaining custody, and grandparents were devoted to the grandchildren).

Wick v. Wick, 403 A.2d 115 (Pa. Super 1979) (mother who had custody of children could seek termination of previously granted visitation rights in grandparents; no burden on mother to prove changed circumstances).

Dolman v. Dolman, 586 S.W.2d 606 (Tex. Civ. App. 1979) (grandparents denied visitation where parents divorced and mother had custody; visitation would be disruptive influence and not in best interests of the child).

Jeffries v. Jeffries, 253 S.E.2d 689 (W. Va. 1979) (grandparents had no legal right to custody or visitation).

#### 1978

Ross v. Powell, 359 So.2d 803 (Ala. App. 1978) (visitation rights denied where maternal grandparents were emotionally unstable and best interests of child required that visits be restrained).

Sachs v. Walzer, 242 Ga. 742, 251 S.E.2d 302 (1978) (no enforcement of previously granted visitation privileges in maternal grandparents where daughter was deceased, children adopted by stepmother, and conflicts between the parents and grandparents).

Looper v. McManus, 581 P.2d 487 (Okla. App. 1978) (visitation rights granted to paternal grandparents who had nurtured grandchild and visitation would contribute to health and well-being of child).

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## PREPARED STATEMENT OF ROBERT A. DESTRO

Mr. Chairman, I am please to follow-up the testimony of my colleague, Professor Linda Mullenix, with this written statement for the purpose of discussing the rights and duties of grandparents vis à vis their grandchildren in cases which do not involve the issue of visitation. Like that of Professor Mullenix, my testimony is solely for the Committee's information. The recognition of "grandparents' rights" in their grandchildren akin to those of parents is an exceedingly complex issue, far beyond the limited scope of this testimony. My purpose is therefore limited to raising some of the issues for purposes of discussion.

As the concurrent resolutions aptly recognize, grandparents often "play a vital role in millions of American families" (S. Con. Res. 40; Con. Res. 45). The substance of my testimony is to review the degree to which current state law and practice recognizes that role and imposes any attendant responsibilities.

In general, the rights and duties of grandparents, in areas other than visitation, turn upon the substance of the "vital role" they play, and the degree to which the state has codified or judicially recognized that role. "Grandparental" interests other than those related to visitation and estate matters fall into the following general categories:

- Custody and Adoption Rights (preferences)
  - 1) as against parent(s)
  - 2) as against third parties
- Support Obligations
- Guardianship Rights (preferences)

Because the law on these issues will vary somewhat from state to state, it is doubtful that the enactment of a Uniform Act regarding visitation rights will address the rights of grandparents and other concerned family in their grandchildren and infant blood relatives. It can also be anticipated that, in the absence of careful planning, such laws will raise additional questions regarding grandparental obligations, and open additional areas of controversy within the already complex field of Conflict of Laws.

## II. "Grandparent" as a Legal Status: "Family" or "Stranger"?

### A. Rights to Custody and Adoption

Although the Supreme Court recognized the right of a grandparent to

include her grandsons in a "single family" home in Moore v. City of East Cleveland, 431 U.S. 494 (1977), the decision has not signalled any attempt by the Court to limit the traditional power of the states to legislate regarding child custody and adoption by creating rights for members of the "extended family" akin to those of the natural parents. Compare, e.g., Santosky v. Kramer, 455 U.S. 745 (1982); Lassiter v. Department of Social Services, 452 U.S. 18 (1981); Quilloin v. Walcott, 434 U.S. 246 (1978); Smith v. Organization of Foster Families, 431 U.S. 816 (1977). The rule in most jurisdictions is that, absent statutory enactment, status as a grandparent confers no legal right to custody or a "preference" in adoption or custody proceedings upon fracture or unsuitability of the family unit. The same is true respecting prior consent to placement for adoption.

Examination of relevant cases demonstrates that the basis for these rules is multi-faceted: they recognize that, at common law, grandparents have no rights in their grandchildren and no obligation to provide support; that the law, common, statutory and constitutional, prefers the natural parents over all others whenever possible see, e.g., Tuckey v. Tuckey, 649 P.2d 88 (Utah, 1982) and that in cases of family fracture the key inquiry is the "best interests of the child." In this regard, it should be noted that the visitation cases summarized by Professor Mullenix are derived from the same set of common law rules, and that whatever rights have come to be recognized rest on statutory foundations, rather than formulations of common law "natural rights" theory or constitutional principle.

Perhaps one of the most succinct statements of the present state of the law respecting grandparents' rights in adoption and custody cases is to be found in Oliva v. Oliva, 52 Ill. App. 3d 626, 367 N.E.2d 971 (1978) wherein the Illinois Court of Appeals rejected the arguments of grandparents who sought to raise their claims in adoption proceedings after the natural mother (their daughter) consented to placing the children for adoption. The court stated:

"We do not wish to be understood in this opinion as denying the natural right of grandparents to have custody of or to adopt their grandchildren in a proper case. All other things being equal, they may be the most logical

persons to have custody or to adopt, and this is especially true where they have played an important part in the raising of the child. A petition to intervene by grandparents, due to their unique relationship to the child must, as it was here, be given careful consideration, for it is implicit in their relationship to the child that they have great solicitude for the child's well being and happiness. This is well recognized in the Illinois cases. [citation omitted] But, in the circumstances of this case there is no legal basis authorizing a right to intervene and it was a matter clearly within the discretion of the court. . . .

We note also that there is a grave matter of public policy implicit in the contention of the grandparents that they have a right to intervene because they are the grandparents and are the preferred parties in an adoption case. In the absence of a statute giving the grandparents a preference (which might be unconstitutionally discriminatory) where are we to stop in allowing relatives to block a proposed adoption? Is an uncle or aunt in a less favorable position than a grandparent? Indeed, an adult cousin may have closer ties to the child than a grandparent. In many countries it is customary for a brother to adopt his deceased brother's children and the cases are legion in both fact and fiction, viz., David Copperfield and Tom Sawyer, of an aunt adopting a deceased sister's child. How can we draw the line at grandparents? Are we to subject every adoption to the hazard of being disrupted or preempted by an intervening relative who learns of it midway in its course?

Olivia v. Oliva, 52 Ill. App. 3d 626, 367 N.E.2d 971 (1978) (emphasis added) Accord Wilson v. Family Services, 554 P.2d 227 (Utah, 1976)

The quotation is instructive for several reasons. First, it recognizes grandparents' interests and their "unique relationship," but limits the possibility of giving them legal effect to "a proper case." Thus, what is described as the "natural right of grandparents to have custody of or to adopt their grandchildren" is not a "natural right" at all. If it were, intervention by the grandparents to protect it should be permitted.

Second, and even more revealing of the true state of the common law, is the court's statement that "a statute giving the grandparents a preference [...] might be unconstitutionally discriminatory...." The court clearly saw grandparents as simply members of a broader class of blood relations, all of whom might be considered for preferential treatment if the test is simply one of "family relationship" or "family integrity." Compare, e.g., 27 Ala. Code § 1.

Third, and last, is the result in Oliva. An adoption preference was given, at the urging of the natural mother, to a non-member of the family. The rationale was the traditional one -- "best interests of the child" -- and



the rule applied is also the traditional one: grandparents have no preference, even as against non-family members.

While Oliva may be distinguished on its facts from a case where the grandparents or other relatives claiming preference stand equally well-qualified to raise the child (the court in Oliva found the grandparents' home to be less "suitable" for the child), it and Moore raise interesting questions in those cases where the grandparents and/or relatives can provide a "suitable" environment (i.e., one which is in the child's "best interests.>"). If the Supreme Court is to be taken seriously in Moore when it stated that "[ours] is by no means a tradition limited to respect for the nuclear family. The tradition of uncles, aunts, cousins, and especially grandparents sharing a household along with parents and children [especially in times of adversity] has roots equally venerable and equally deserving of constitutional protection," a strong policy argument can be made for recognizing -- by state statute -- some familial preference in cases where it is not inconsistent with the child's best interests. See, e.g., 25 U.S.C. § 1914 (Indian children).

For application of the general rule, as modified by any local common law or statute, the following cases are instructive:

#### Alabama

Johnson v. Sparks, Civ. No. 3837, Court of Civil Appeals of Alabama,  
(filed August 31, 1983) (slip opinion) (custody)

Eskew v. Eskew, 57 Ala. App. 512, 329 So.2d 567 (1976) (custody)

Davis v. Turner, 55 Ala. App. 366, 315 So.2d 602 (1975)

(grandparents must follow statutory procedure for adoption; some consideration is given by statute to relatives with whom child has lived for more than one year by Ala. Code)

Alaska

A.B.M., Natural Mother v. M.H. & A.H., Prospective Adoptive Parents,

651 P.2d 1170 (Alaska, 1982) (statutory preference)\*

E.A. v. State of Alaska, 623 P.2d 1210 (Alaska, 1981) (right to

appeal adoption). (statutory preference)\*

Arizona

Koehler v. Koehler, 121 Ariz. App. 592, 592 P.2d 788 (1979)

(injunction against contact by grandparents)

LeRoy v. Odgers, 18 Ariz. App. 499, 503 P.2d 975 (1972)

Arkansas

Cox v. Stayton, 273 Ark. 298, 619 S.W.2d 617 (1981)

(custody/adoption statutes)

Quarles v. French, 272 Ark. 51, 611 S.W.2d 757 (1981) (right to

intervene in adoption.

In the Matter of the Adoption of Thomas David Hensley, v.

Wist. 270, Ark. 1004, 607 S.W.2d 80 (1980) (adoption)

California

Smith v. Smith, 270 Cal. App. 2d 605, 75 Cal. Rptr. 900 (1969)

(adoption)

Colorado

Rippere v. Rippere, 157 Colo. 29, 400 P.2d 920 (1965) (custody)

People, in the Interest of P.D., formerly M.A.D., a child, v.

M.G., 41 Colo. App. 109, 580 P.2d 836 (1978) (custody support,  
right to terminate)

People, in the Interest of C.P. and D.P., 34 Colo. App. 54,

524 P.2d 316 (1974) (adoption)

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\* Federal Law 25 U.S.C. §1914 provides: Any Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 1911, 1912, and 1913 of this title.

Delaware

R.A.D. v. M.E.Z. and B.G., 414 A.2d 211 (Del. Super. 1980)

Florida

In the Interest of J.S. v. Seekell, 404 So.2d 1144 (Fla. App. 1981)

(adoption)

Ramey v. Thomas, 382 So.2d 78 (Fla. App. 1980) (custody)

Behn v. Timmons, 345 So.2d 388 (Fla. App. 1977) ("best interest"

standard inapplicable to custody dispute between father and maternal grandmother after death of divorced mother having custody; award to father based on parental rights)

Jones v. Allen, 277 So.2d 599 (1973) (grandparents prevailed in

adoption after death of mother over claims of imprisoned father who had abandoned children; based on "best interests of child")

[note: Florida "abandonment" standard is more flexible than many other states]

In re Adoption of Arnold, 184 So.2d 192 (Fla. App. 1966)

(granddaughter who had been adopted by grandparents pursuant to consent of their 17-year old daughter returned to natural mother in subsequent adoption proceeding)

Georgia

Johnson v. Eidson, 235 Ga. 820, 221 S.E.2d 813 (1976) (courts may not permit grandparents to adopt on grounds of "moral unfitness" of parents without their consent.

Department of Human Resources v. Ledbetter, 153 Ga. App. 416, 265

S.E.2d 337 (1980) (grandparents have no right to intervene in adoption proceedings, but may seek adoption through normal channels) (case involved aunt and uncle who were "virtual grandparents")

Carey v. Phillips, 137 Ga. App. 619, 224 S.E.2d 870 (1976) (mother

may prohibit adoption by grandparents by refusing consent to adoption)

Illinois

People ex rel Bukovic v. Smith, 98 Ill. App. 3d 144, 423 N.E.2d 1302

(1981) (grandparents may not attack an existing custody decree on grounds that mother asked them to care for children for an "open-ended" period of time"

In re Adoption of Oliva (Benavidez, Real Party) v. Oliva, 52 Ill.

App. 3d 626, 367 N.E.2d 971 (1977) (grandparents have no right to intervene in adoption; mother's preference for third-party non-family member would be respected where in best interests of child)

Chodzko v. Chodzko, 66 Ill.2d 28, 360 N.E.2d 60 (1976) rev'g, 35 Ill.

App. 3d 357, 342 N.E.2d 122 (1975) (grandparents have no special status)

In re Adoption of Hoffman v. Hoffman, 61 Ill. 2d 569, 338 N.E.2d 862

(1975) (parents who consented to adoption by grandparents could not set it aside absent finding of fraud or duress in grandparents' representations leading to adoption)

Indiana

Browder v. Harmeyer, 453 N.E.2d 301 (Ind. App. 1983) (custodial

grandparent does not have parental interest sufficient to warrant full "due process" accorded to the "fundamental right of family integrity" absent prior adoption of child where controversy in adoption was between paternal grandparents and custodial, maternal grandmother)

Kentucky

Ricks v. Lawrence, 447 S.W.2d 640 (Ky. 1969) (custody award to

father after grandfather had been awarded temporary custody)

Louisiana

Griffith v. Roy, 263 La. 712, 269 So.2d 217 (1972) (only the state

may attack parental custody for neglect while marriage exists

between parents; grandfather was "stranger" to custody hearings and writ of habeas corpus would issue to grandfather to return children to mother)

In re Burnet, 415 So.2d 465 (1982) (grandparents may not adopt without consent of non-supporting parent)

NOTE: The holding in Re Brunet reflected the Louisiana civil law rule in force when the case arose. It has now been superceded by La. Rev. Stats. (1980) 9:422.1

#### Massachusetts

Adoption and Visitation of a Minor, 14 Mass. App. 992, 440 N.E.

2d 766 (1982) (fitness of grandparents would be considered in controversy over custody with foster parents)

#### Minnesota

In re Welfare of Viray, 285 Minn. 269, 172 N.W.2d 851 (1960)

(grandparents subject to "best interests of child" standard)

#### Mississippi

Parish v. Stevens, 228 So.2d 607 (Mis. 1969) ("best interest,"

standard applied to controversy between paternal and maternal grandparents)

#### New York

People ex rel Kaye v. Spence-Chapin Adoption Service, 12 N.Y.2d 951,

238 N.Y.S. 2d 777, 189 N.E. 2d 104 (1963) (grandmother had no rights in child where parents placed it for adoption with agency and agency had placed it for adoption with foster parents)

#### Missouri

Hupp v. Hupp, 238 Mo. App. 964, 194 S.W.2d 215 (1946) (grandparents

can never prevail in custody action over fit parent)

#### Montana

In the Matter of M.N. et al., Neglected Children, 649 P.2d 749



(Mont. 1982) (grandmother does not, by virtue of her status as a grandparent, have any superior right to custody to that of a non-relative." See also Montana Code Ann. 41-3-406

#### Oregon

Graham v. Children's Services Division, 39 Ore. App. 27, 591 P.2d

375 (1979) (grandparents who once had custody have no right to procedural protection before agency empowered to withhold consent to adoption)

Mahoney v. Linder, 14 Ore. App. 656, 514 P.2d 901 (1973)

(grandparents have no standing to contest adoption of their grandchildren)

#### Texas

Blalock v. Blalock, 559 S.W.2d 442 (Tex. Civ. App. 1977)

In the Interest of an Unnamed Child, 584 S.W.2d 476 (Tex. Civ. App. 1979) (grandparents have no legal relationship to a grandchild)

#### Utah

In the Interest of Summers Children v. Wulftenstein, 571 P.2d 1319

(1977) (applying rule that grandparents have "some dormant or inchoate right or interest in the custody and welfare" of their grandchildren)

Wilson v. Family Services Division, 554 P. 2d 227 (Utah, 1976) (recognizing right to intervene on "inchoate interest" theory), but see Wilson v. Family Services Division, 572 P. 2d 682 (Utah 1977) (grandmother fails on merits)

Walton v. Coffman, 110 Utah 1, 169 P. 2d 97 (1946) (Children's best interest may require grant of custody to grandparents rather than mother, despite finding of maternal fitness)

#### B. Guardianship Rights

The law of guardianship rights was not examined in great detail for this testimony. It appears, however, that family members, including grandparents,

are recognized as the "natural guardians" of the children of deceased family members as "next of kin." See, e.g., Re Guardianship of Stange, 38 Misc. 2d 170, 236 N.Y.S.2d 718 (1962) ("a grandparent is the natural guardian of orphaned grandchildren."); Herod v. Davidson, 650 S.W.2d 501 (Tex. Civ. App. 1983). See generally 32 A.L.R.2d 863

### C. Support Obligations

An interesting, as well as important, related issue in the controversy over "grandparents' rights" is its corollary: the issue of support obligations. The limited research on this topic demonstrated that grandparents generally have no obligation to support their grandchildren unless it is imposed in a general statute imposing liability on family members for the needs of paupers. See, e.g., Maine Rev. Stat. Ann § 4467; Minn. Stats 261.01; New Jersey Stats Ann 301: 4-60, 66. In New York, former Section 145 of the Family Court Act imposed support obligations on grandparents, but the law was changed and New York now recognizes no grandparent support obligations. See De Jonge v. Blum, 55 N.Y.2d 1030, 449 N.Y.S. 2d 209, 434 N.E. 2d 1076 (1982); Taylor v. Dumpson, 37 N.Y.2d 379, 375 N.Y.S.2d 90, 337 N.E.2d 600, rev'g, 79 Misc.2d 379, 337 N.E.2d 600, 362 N.Y.S.2d 888 (1979) (parents of unwed pregnant minors have no duty to support their grandchildren, but law forbidding grandparents from qualifying for benefits was unconstitutional) (eligibility for benefits now provided by Section 371 of the Social Services (law).

Thus, the general rule is that grandparents have no common law support obligations which would compel their participation in the support of their grandchild, see, e.g., Franklin v. Franklin, 75 Ariz. 151, 253 P. 2d 337 (1953) (grandfather who had been granted custody prior to divorce not required to continue support after divorce from wife who was granted custody); Haggard v. Idaho Dept. of Health and Welfare, 98 Idaho 55, 558 P.2d 84 (ADC funds may not be reduced by counting grandparents' assets); Elliot v. Ehrlich, 203 Neb. 790, 280 N.W.2d 637 (1979) ("no legal obligation upon grandparents to support grandchildren") but cf., Landeche v. Airhart, 372 So.2d 598 (La. App. 1979) (La. Civ. Code Art. 229 imposes support obligations in some circumstances).

Some states do, however, recognize a "moral obligation" accepted by grandparents sufficient to allow grandchildren benefits under insurance or other policies. See Superior Coal Co. v. Industrial Comm'n, 304 Ill. 320, 322, 136 N.E.2d 762, 762-63 (1922). Cf., Maddox v. Queen, 150 Ga. App. 408, 257 S.E.2d 918 (1980) (applying parental immunity for torts to grandfather of child acting "in loco parentis" and recognizing family relation.

### III. Conclusion

This short summary of the law of grandparents' rights is not exhaustive by any means, but it does clearly demonstrate that the courts have been reluctant to permit grandparents to claim rights against either the parents or non-family member third parties without statutory authorization. While the rule against allowing grandparents to question or challenge the legal rights of parents is understandable, the rule placing non-family member third parties on the same level as blood relatives is more difficult to explain. Perhaps part of the answer lies partly in the quote from Illinois Court of Appeals in the Oliva case noted above: granting grandparents a judicially-created preference over other family members is difficult to justify. Compare 25 U.S.C. § 1914 (special preference in adoption of Indian children) Code of Alabama §§ 3 et seq. (establishing special provisions for "final" orders of adoption for custodial blood relatives or foster parents under certain conditions) The other part likely rests in the lack of support obligations imposed on grandparents. Their role, while certainly "vital" in most caring, closely-knit families, is not one that judge-made law will recognize or enforce against them. At this point in time, it is an unfortunate fact that the law does indeed see grandparents as "strangers" to the family relationship, and the move toward state legislative consideration of the many issues involved is, in my judgment, a step in the right procedural direction.

Senator EAST. Thank you, Professor Mullenix, and I appreciate your being brief. I know that is extremely difficult to do, particularly when you are talking about the historical development of this problem, and its very significant legal implications.

Your statement, which I have had an opportunity to read, is excellent, and, of course, will be made a part of the permanent record along with that of Professor Destro—and we may call upon you in the future for additional thoughts on the legal background of this issue, which is something we shall obviously, the subcommittee and the committee as a whole, want to reflect on as we move along with this matter.

Let me just ask you this, as a matter of generalization about the problem, did you say that between 40 and 50 States, now have laws on the books dealing with this question of visitation rights of grandparents?

Is that correct?

Ms. MULLENIX. That's correct.

Senator EAST. They deal with it in some statutory form. No. 9 apparently a great deal of diversity exists among the visitation laws adopted by these States.

Ms. MULLENIX. That's right. Something that I didn't mention but I think was indicated by some of the people on the panel, is that, there are major conflicts-of-laws problems engendered by the fact that the statutes in the States are so different, what this does is allow or induce some parents to remove their children to foreign states where the grandparents are not residents in order to circumvent either a court decree or to come within the purview of different statutory language.

Senator EAST. So they vary enormously in those 40 States.

Ms. MULLENIX. That's right.

Senator EAST. Let me just ask you, as a matter of interest, those other States, which involve over half of them, have they no law at all and just rely upon the common law?

Ms. MULLENIX. Some of the States rely upon the common law, some of the States that have statutory provisions will use common law reasoning in denying, visitation rights.

Senator EAST. On that point, in your expert opinion, is the common law very sympathetic to grandparents rights?

Ms. MULLENIX. No, not at all. The common law position basically is supportive of parental authority to make these decisions, and I think this particularly comes to the fore when you have at least one parent who is surviving and is the custodial parent of the child.

Senator EAST. I was just curious as to why it would appear that the common law was callous and hardened on this question of grandparent visitation rights, I am just speculating, whether historically the common law emerged out of a period where you had the traditional nuclear family well intact, so that the problem was not a major policy or social question and hence in those rare cases where the problem may have arisen it seemed to be less solicitous with the visitation rights of grandparents. What I am angling at is that the common law often comes out of a period in which the whole setting of values was very different than it is today. Today it seems to me the problem is that we have had such

a revolution through the new morality in terms of the family, that this problem takes on proportions that the common law never anticipated.

One somewhat longs for the days where generally family values were of the type that I think the earlier panel has underscored so heavily and constituted an integral part of American society. And I think the bedrock of its strength as a nation.

I don't mean to go on unduly here, but you can have a strong dollar and a strong national defense and do all of these other things, but, as Plato said, society is simply the individual writ large—and I fear we have moral malaise in this country which stems from the erosion of traditional family values. I fear we may all suffer if we continue to look with indifference and contempt upon, the old values and institutions on which this Nation was built.

As Ecclesiastes says: "There is nothing new under the Sun." I don't think the new morality is anything new under the Sun. It's only the old degeneracy, the old hedonism, the old decay, in a new form. No matter what its form, this moral decadence must not be allowed to destroy the values of the Judeo-Christian tradition and others that have made the West and this country in particular as enduring and humane and compassionate as they have been.

I think this is the part of a broader battle. And I thank you for coming and offering your comments. As you properly indicated, you and Professor Destro wouldn't wish to dictate what the legal solution is; what you are trying to do is provide background information as to the status of the law today. Your comments have been very useful in outlining the great diversity among the States which have adopted statutory laws in this area, and the problems, of the remaining States which rely on the old common law.

And I thank you all for coming, and having met our appointed rounds. Unless I hear vigorous protest to the contrary, this session of the Subcommittee on Separation of Powers stands adjourned.

Thank you very much for all coming and joining.

[The subcommittee adjourned at 12:40 p.m.]





## APPENDIX

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### ADDITIONAL SUBMISSIONS FOR THE RECORD

PREPARED STATEMENT OF EDITH S. AND HENRY W. ENGEL

Honorable Chairman and members of the Committee:

There are many, many forms of child abuse. It need not be physical only. Psychological and emotional abuses are equally damaging. We are here as grandparents not only in our own right and for our own grandchildren, but to speak for all grandchildren who have been and who are being abused consequent to the breakup of a family relationship.

In our own case, we were not parties to the alienation, but, along with the children, were victims comparably deprived of association, affection, and even knowledge of one another. Our grandchildren were the victims of deprivation, another version of abuse, that has undoubtedly led them to believe they were abandoned by us.

Our elder daughter broke down under the pressures of a destructive marriage. She ran away, fearful of inflicting abuse upon her two children, who suffered traumatically from the loss of their mother. They were further punished by the actions of their father who literally amputated the maternal side of the family from their lives, without explanation. Numerous psychological professionals have attested that these children have suffered an overwhelming sense of abandonment by us, their mother's family.

With few other family connections in the general area, our grandchildren are condemned to a rootlessness and lack of family background and meaning that otherwise would represent a

support system particularly necessary in a case like theirs where divorce has ripped apart the family structure.

Numerous evidences of specific abuse have been documented in the family life of our grandchildren. They live in a bilingual household in which the mandatory language spoken is not that of their schooling or potential companions--but rather that of their foreign-born stepmother. Consequently they have learning problems, few or no friends and little companionship, and have been described as sad, dispirited, and withdrawn children. For reasons unknown, they have never been observed playing outside of their/<sup>suburban</sup>home, even in fine summer weather, either by themselves or with any companion. Even walking home from school on its last day, each was noted as shuffling along alone, blankly staring down at the ground. Where was the normal exuberance of a child released from school for the summer?

One can only repeat that abuse is not alone physical. These children do not seem to have been beaten or struck by their parents, but the indications of neglect, psychological and emotional, are quite apparent. Where our granddaughter, at the time of an earlier hearing on visitation rights, was termed "emotionally fragile" by the father's own psychologist-witness, there is no evidence whatsoever that the therapy recommended for her has been carried out. Surely a child of ten-to-twelve years under the care of a therapist would manifest a few signs of emotional well-being in her life rather than those that have been observed. Speech therapy, orthopedic therapy, and educational tutoring--all appear to be recommended remediations of which she has been deprived. For a father who, a few years ago, spent thousands of dollars upon carefully selected paintings and other art objects, such deprivations can well be termed child abuse of the worst order, and negligence not in the best interests of the child.

We do not begrudge what we have spent monetarily in pursuing any opportunity to participate in the lives of our grandchildren. We have already been deprived of seven of their most

formative years, as have they of us, and we have no assurance that we will ever be successful in our quest. But we are no longer young persons, and the thousands of dollars it has already cost us can ill be spared by people of very modest means. Further, the financial cost is only one form of expense, be it out of pocket or loss of earning time. What of the physical costs and emotional drain? No dollar figure can possibly be placed upon them.

Why do we persist in our endeavors? It is not our intent to usurp parental authority or prerogatives. We do not seek custody of our grandchildren. We do not want to intrude into a nuclear family, but we want to be permitted a sharing in the living experiences and growth of our grandchildren. We do not wish to infringe upon parental authority, but we cannot sit idly to the side when parental negligence results in deprivation and abuse. Parental tyranny, unchallenged, should never be permitted to aggrandize into familial holocaust.

If we do not stem the incipient flood of cases of children deprived of their roots through denial of grandparental contact, what is to happen to this nation in the future? Footloose, unsure of themselves, readily mobile but eternally rootless, children without backgrounds and exposure to an ethnic, clan, or family heritage will only spawn more and more of their kind. And the children of our children, knowing no better and with their parents' example, will turn upon their own parents and treat them similarly. America will be the sure loser. In no other country today is this a problem of such consequence. Other nations know better. Can we do less?

TESTIMONY OF RITA WARREN, PRESIDENT OF THE  
CHRISTIAN CIVIL LIBERTIES UNION

H.Con.Res. 4044

TO: Subcommittee on Courts and the Subcommittee on  
Separation of Powers

Mr. Chairman:

I, Rita Warren, representing the Christian Civil Liberties Union, wish to submit my testimony in favor of H.Con.Res. 4044 -- a concurrent resolution expressing the sense of Congress. A uniform State act should be developed and adopted which provides grandparents with adequate rights to petition State courts for privileges to visit their grandchildren following the dissolution (because of divorce, separation or death) of the marriage of such children's parents and for other purposes.

Being myself a grandmother, I share the concern of our rights to visitation for our grandchildren. I feel that without grandparents there will not be any grandchildren. The role of grandparents is very important in the lives of children. It gives them a sense of security, but above all, it is the love that they receive that is very important. Children from the day that they are born grow healthy in the home where there is love, not only from their parents, but also from their grandparents. Family unity is the most important part of any child's life, not only for their future but also for the future of our Nation. If by any circumstance a child is unable to share the love of both parents, a child will be able legally to enjoy his or her grandparents. Too many courts have tried to ignore that grandparents are a part of their grandchildren's lives and the courts have often tried to keep them apart. Having myself experienced such judges, I feel that we grandparents will be grateful to our Congress for taking some action in giving us the rights that we so well deserve.

To be able to enjoy the love and concern for our children, we urge this Committee to report favorably on H.Con.Res. 4044.



Knowing that many blessings and prayers will be upon you and the gratitude of all the grandparents and grandchildren of this Nation, thank you and God bless you.

Love, prayer and peace,

Sincerely yours,

Rita Warren

## ***What is a Grandmother?***

*She's always good natured with a bug  
and a kiss.*

*She's the last one to leave,  
the first one you miss.*

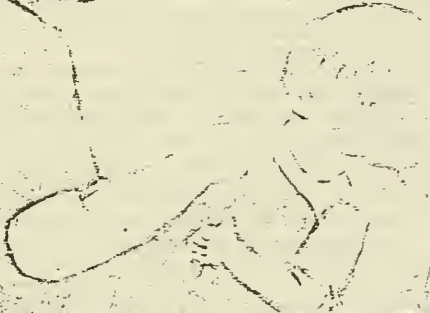
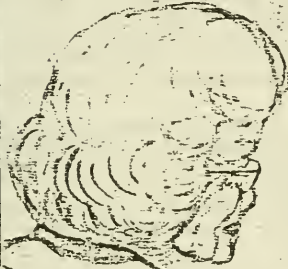
*She's Thanksgiving day, turkey and dressing,  
bot pumpkin pie and God's blessing.*

*She's jams and jellies and apron strings.*

*She's Grandma or  
Nannie, a million  
good things.*

*And most of all there's  
no story told that  
Grandma can't  
capture with her  
words of yold.*

***Grandmother  
is Love.***



## LETTERS

WASHINGTON, D.C., September 4, 1983.

*Subcommittee on Separation of Powers, Washington, D.C.*

DEAR Ms./SIRS. This is an urgent request that you support H. Con. 45—the bill sponsored by Congressman Biaggi and supported by Congressman Lantos.

Unless you have been through the experience none of you can imagine the pain and anguish grandchildren and grandparents suffer when either one or both parents vent their resentment by refusing to let the children see their grandparents. This is especially true in the case of divorced parents, but is often true in cases involving the death of one parent.

We believe the children are the ones hurt the most at being deprived of their grandparents love and support. This added to the pain of divorce of the parents is almost too much for a child to endure

We beg of you to consider these facts and to have compassion for both children and their grandparents. Please support House Bill 45.

Thank you for your time in reading our letter.

Sincerely,

Mr. and Mrs. E. G. CHRISTIANSON.

FLUSHING, N.Y., October 19, 1983.

Senator STROM THURMOND,

*Chairman, Committee on the Judiciary, U.S. Senate, Washington, D.C.*

Attention: Mr. Vinton DeVane Lide, Chief Counsel and Staff Director.

DEAR SENATOR THURMOND: In reply to your most kind and thoughtful letter of September 29th, my wife, Marcia, and I, as suffering grandparents, concerned about the passage of Senate Concurrent Resolution 40 (grandparents visitation) want to take what may be the only opportunity we may ever get to tell you of a horrendous set of governmental conditions—stemming from the Judiciary and the United States Justice department—which you and the members of the Full Committee may not be aware of.

Senator Thurmond, this letter is written in pain. God knows, there are men on your committee such as Senator Dole, Senator Denton and Senator Kennedy who have suffered, physically and psychologically, as much as any American living today. Marcia and I think that when men such as these, under your leadership, fully understand what passes for Justice to grandparents and their grandchildren in America today; from the state and Federal courts and the U.S. Department of Justice, that these Senators will feel a revulsion and horror that only a human being who has suffered, deeply, can experience.

My wife and I want this letter to stand as a brief indictment of our court system and the Department of Justice so that tens of thousands of other American grandparents and grandchildren will not have to suffer, as we do now, because of corruption, apathy and indifference at the judicial level.

Our main goal, Senator Thurmond, of course, is to see our beloved grandchildren, Brian, 14, and Vanessa, almost 11, whom we have not been allowed to see in Colorado, where they were taken as hostages, almost four years ago.

Senator, we do not want to pour out our hearts here as we did before the Biaggi Subcommittee on Human Services, in December 1982. Our anger and sense of injustice is concentrated in the following four areas:

(1) Children, in this country, today, are being treated like chattel by both state and Federal court judges. This is now happening even when the Fifth Circuit Court of Appeals ruled recently that a child, in a life-determining situation, is entitled to counsel under the Constitution. (*John v. Dept. of Justice*, 624 F. 2nd 522 (1980) and 653 F.2nd 884 (1981).) Our grandchildren, in New York State Supreme Court, in 1978, were twice denied any counsel, on the record. Judges, at both the state and Federal district court level, ignored my grandchildren's wishes and best interests; on the record. This, in turn, led to the children being "kidnapped" to another state; against their will and to the denying of our New York visitation rights by a little Colorado mountain court; despite our New York State warrant for the arrest of our ex-son-in-law.

(2) The U.S. Department of Justice is flagrantly violating the enforcement of the Federal Parental Kidnapping Prevention Act of 1980 (28 U.S.C., Section 1738A) in open defiance of the will of Congress and the people!

The department is doing this for its own selfish ends and has drawn up its own handbook of enforcement, making a mockery of the law and Congressional intent. (More than 100,000 children are being kidnapped each year. Many are being taken away from their grandparents—interstate—as ours were.) Representatives of the Justice Department, at the highest level, have told us they “did not want to open the floodgates” because it did not suit the department’s budget and priorities. Thus, the Justice Department openly flaunts the will of the Congress and the people, today.

Only your Committee, Senator Thurmond, is powerful enough to call the Justice Department to account for the sea of human suffering it has forced American parents and grandparents to wade through; because of its own departmental selfishness and indifference. (A leading member of the Criminal Division, in Washington, D.C., in front of Congressman Biaggi’s aide, Dr. Cassie Statuto, last December, told my wife and me, “Well, you win some and you lose some. You people have to learn to accept that!”)

I told this man, Ezra Freedman, that he was talking about children and that we weren’t prepared to lose our grandchildren. I then asked Mr. Freedman if he had any children but he refused to answer. I know that Mr. Freedman was merely the spokesman for Mr. William French Smith and “departmental policy” but you see, Senator, I had enlisted in the United States Army, in 1946, at the age of 17, to serve my country and to obtain the G.I. Bill of Rights so that I could attend college. I never expected to hear a member of the United States government tell me I had to give up my grandchildren because the Justice Department has decided not to carry out an Act of Congress, signed by the President of the United States on December 28, 1980!

A side effect of this Justice Department decision to enforce the Federal Parental Kidnapping Prevention Act of 1980, in only about 40 cases a year, out of 100,000, is that it causes what Congressman Biaggi called massive “child abuse” each year; both psychologically and physically.

(3) Today, Federal money, in the form of Social Security checks from dead parents; payable to the new guardians or step-parents of grandchildren, such as mine, has made these children pawns in an on-going game in which children are being dragged across state lines for profit!

The Social Security Department does not and will not check to see if the children are really getting any benefits from the money paid out each month. (My grandson, Brian, 14, recently had to wear his father’s shoes to a dance, in Colorado, while my ex-son-in-law collects thousands of dollars a year in our dead daughter’s Social Security benefits; benefits which were earned in New York and are paid in Colorado, and which no one checks on!) You can multiply this case by thousands and the money by the millions, in America, today. Other children are being passed along from spouse to spouse while Federal Social Security benefits, from a dead parent, make these children walking annuities!

Thus, grandchildren are being denied access to their grandparents by the very people who are profiting from this child-bartering situation! (Last December, Congresswoman Geraldine Ferraro, in Washington, thanked my wife and me for bringing this abuse of Federal funds to the attention of the House Select Committee on Aging.)

(4) Lastly, politically-appointed judges, such as we have in Queens County, New York City, think it merely a “favor” to grant custody to a family friend of the court.

We know it happened in our case, in State Supreme Court where the judges are put on the bench by an entrenched machine. We brought charges against the machine; based on hard evidence, in Federal District Court, in Brooklyn, in 1979.

We hired a top Park Avenue law firm who took our evidence—and our money—and filed a brief in January 1979. What happened to that firm and to us, Senator Thurmond, as a result of bucking the machine in Queens County, would make your stomach turn! Now our grandchildren are suffering for it, as is our whole family, because we dared to tell the truth in a Federal Court! (The Federal judge acted in a manner that cries out for a full investigation.)

In 1980, the Federal Second Circuit Court of Appeals let us file our own brief, Pro Se. That high court re-instated our case after the top New York law firm was frightened right out of the case when the Queens County machine put pressure on them. The firm defaulted on paying \$75 in filing fees to the Second Circuit, after taking more than \$20,000 from our family!)

In the Federal district court, the judge allowed my ex-son-in-law to ignore that court’s order to appear before it. He also dismissed the case, in one day, without even consulting the file folder, which was in the 2nd Circuit’s court house. This, while writing to us that he didn’t remember any of the details of the case.



Please note, Sir, we're not talking about judicial indifference or incompetence here, we're talking about political favoritism, effecting grandparents' visitation rights. (In Denver, our ex-son-in-law, a former convict, drug user and dealer; wanted on a New York State warrant, had his word taken in a little mountain court house, while my wife and I were told by Judge Joseph P. Lewis to leave Denver—despite having had custody of the children for five years in New York and New York visitation rights. The judge said never to come back; to forget about the children forever and that they now had new grandparents!)

We took this case to the United States Supreme Court. In October, 1982, they refused to docket it. (We know a grandfather in Sayre, Pennsylvania, Mr. Garnett Brown, who has been fighting the courts, in similar circumstances for eight years! He had his case docketed in a Federal district court but because Garnett Brown can't get a lawyer to help him he is now appearing Pro Se, in the 3rd Circuit Court of Appeals. Mr. Brown's case was dismissed because he couldn't single-handedly, respond, in time, to a brief filed, in defense, by the Attorney-General of Pennsylvania. Is this justice for American grandparents?)

Senator Thurmond, the doling out of custody, in small state courts is, as you know, in many cases, merely a political favor by a judge.

In our city, recently, the New York Times put the story on page one—two days in a row—when a local boss, Stanley Friedman, decided to drop two veteran judges from the State Supreme Court bench for purely political reasons. Mayor Koch said aloud that everybody knows that in New York such judicial appointments are political and that, "They who live by the sword shall die by the sword!"

My wife and I are most anxious to help the Committee, so that we can get to see our grandchildren and we need your help, too. We have lived a nightmare, trying to get Brian and Vanessa their legal rights and our legal rights; as their loving grandparents. We feel that the children have suffered harshly and unjustly at the hands of local state court judges in Queens County and Denver, and at the hands of the Federal judges in New York; as well as the Department of Justice. Marcia and I have urged that a Federal ombudsman and a mediation panel be established in every state, to keep other grandparents and grandchildren from having to suffer as we, and Brian and Vanessa, are suffering now.

We know, Senator Thurmond, that you are a kind and living father.

As God is our witness, everything we have told you is true and can be documented. Congressman Biaggi and Congressman Gary Ackerman from New York will vouch for us; as will Congresswoman Geraldine Ferraro and Congressman Tom Lantos. (Our grandchildren and two of Congressman Ackerman's children were in the same public school classes in Queens County.)

We have documentation of four years of struggle against judicial injustice and indifference.

Senator Thurmond, if you and the members of the Full Committee wish to hear a horror story that has taken us from the lowest court in New York State to the highest Court in America; we would be happy to tell this story of injustice to children and grandparents—at length—naming names, if you wish, to anyone you choose.

We feel that by speaking up for Justice—for both grandchildren and grandparents—that we may be able to help Brian and Vanessa as they grow up, in a motor home, in Colorado, cut off from their roots, their religion, and their dead mother's family. We raised them for almost five years and dearly love them, as they love us.

We thank you for listening.

If you can find it in your heart to hear us and help us, Senator Thurmond, you and the Committee will be doing God's highest work; something you have obviously been chosen for.

Sincerely,

HARVEY KUDLER, Ph. D.





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